

Award No. 11070
Docket No. CL-10841

NATIONAL RAILROAD ADJUSTMENT BOARD

**THIRD DIVISION
(Supplemental)**

Ralph D. McMillen, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES**

THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(a) The Carrier violated the Rules Agreement, effective May 1, 1942, except as amended, particularly Rules 2-A-1 (e) and 3-A-1, when it failed to notify L. L. Scott of a known vacancy as Truck Driver on first trick at Hawthorne Storeroom, Southwestern Region, and assigned a junior employe, H. C. Perry, to fill the vacancy.

(b) The Claimant, L. L. Scott, be allowed eight hours' pay for October 16, 17, 18 and 19, 1956. (Docket 248)

EMPLOYEES' STATEMENT OF FACTS: This dispute is between the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes as the representatives of the class or craft of employes in which the Claimant in this case held a position and the Pennsylvania Railroad Company—hereinafter referred to as the Brotherhood and the Carrier, respectively.

There is in effect a Rules Agreement, effective May 1, 1942, except as amended, covering Clerical, Other Office, Station and Storehouse Employes between the Carrier and this Brotherhood which the Carrier has filed with the National Mediation Board in accordance with Section 5, Third (e), of the Railway Labor Act, and also with the National Railroad Adjustment Board. This Rules Agreement will be considered a part of this Statement of Facts. *Various rules thereof may be referred to herein from time to time without quoting in full.*

Claimant L. L. Scott held a regular position as Stores Attendant, Hawthorne Storeroom, Indianapolis, Indiana, tour of duty 6:00 P. M. to 3:00 A. M., rest days Saturday and Sunday, with a seniority date on the Seniority Roster of the Southwestern Region, in Group 2.

H. C. Perry, a Relief Store Attendant, was assigned, during the period covered by this claim, to a temporary vacancy in position of Shipper and Re-

tion, the right to produce competent evidence in its own behalf at a proper trial of this matter and the establishment of a record of all of the same.

All data contained herein have been presented to the employe involved or to his duly authorized representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: The facts in this case are aptly stated in an agreed upon joint statement. Which reads:

"On Tuesday, October 16; Wednesday, October 17; Thursday, October 18; and Friday, October 19, 1956, M. S. Dobson, one of the two regularly assigned truck drivers at the Hawthorne Storeroom, Indianapolis, Indiana was absent with permission account of sickness. His position was not filled during this period.

"During the work week starting Monday, October 15, 1956, H. C. Perry, who held regular assignment as a relief stores attendant was worked on the vacancy of J. L. Hiner, Shipper and Receiver and was paid the higher rate. Mr. Perry's tour of duty during week of October 15th through 19th, inclusive, was 7:00 A. M. to 3:00 P. M. J. L. Hiner was working vacation vacancy of Clerical Position Symbol V-6-C.

"At 10:00 A. M., Tuesday, October 16, 1956, Mr. Perry was ordered to take the Company truck to Columbus, Indiana and Spencer, Indiana, in order for car shop personnel to make repairs to rush cars at those locations. Mr. Perry returned to the storeroom and marked off duty at 9:30 P. M. and was paid 6½ hours overtime. On dates of October 17 and 18, 1956, there is no record of Mr. Perry being required to use the truck. On Friday, October 19, 1956, Mr. Perry made 1½ hours overtime, marking off duty at 4:30 P. M.

"During the period covered by this claim, L. L. Scott, the claimant, had a regular assignment as Stores Attendant, 6:00 P. M. to 11:00 P. M. and 12:00 M. Midnight to 3:00 A. M. Mr. Scott was available for extra work on dates listed in subject of this claim.

"There is no Group 2 extra list agreement in effect at this location for the assignment of extra truck work."

The only error in the statement is that the Claimants regularly assigned hours were from 3:00 P. M. until 11:00 P. M. Further it is agreed the only days we are concerned with are October 16, in which 6½ hours overtime was paid, and October 19, in which 1½ hours overtime was paid.

It is the position of the Employes that the Carrier violated the Rules Agreement, particularly Rules 2-A-1(e) and 3-A-1, when it failed to notify the Claimant, of a known vacancy of Truck Driver, and assigned a junior employe, to fill the vacancy.

The position of the Carrier as stated in the Joint Statement of Agreed Upon Facts is as follows:

"It is the prerogative of Management to determine the qualifications of employes. In the instant case, this prerogative is superseded by the authority of the Secretary of State of Indiana and the Motor Vehicle Code which stipulates that drivers for hire such as the motor truck driver—chauffeur positions in the instant case, must have a chauffeur's license. Mr. H. C. Perry had chauffeur's license.

"The Claimant, L. L. Scott, did not have a chauffeur's license during the period covered by this claim, nor do the Employees attempt at any time to establish that he did have, as in former Southwestern Division Case No. 466, which was paid.

"Management cannot knowingly violate State of Indiana laws by the use of persons not properly licensed, therefore, this claim has been properly denied."

It is undisputed that the Claimant is the senior Employee so we will not concern ourselves with Rule 3-A-1. We must now look to Rule 2-A-1(e) to determine if the Carrier was in violation. Rule reads:

"2-A-1. (e) Positions or vacancies of thirty days or less may be filled without bulletining. The senior qualified available employee requesting such position or vacancy or requesting a bulletined position or vacancy, pending assignment of a successful applicant, will be assigned, except where agreement under Rule 5-C-1 requires the use of extra employee, provided this will not entail additional expense to the Company."

According to the Rule there are certain conditions which must be met before an Employee has the right to be assigned to a vacancy. These conditions are: 1. Seniority. 2. That employee is qualified. 3. The employee is available. 4. That the employee requested the vacancy. 5. No additional expense to the Company is involved. It is true the Claimant had seniority, it is debatable as to his being qualified, available or that he had requested the vacancy. However we must determine whether the Claimants being placed on the job would require additional expense to the Carrier. The Claimant was the only Group 2 Store Attendant on duty on the second trick, had he been assigned the vacancy it would have required another employee to fill his position, due to the absence of an available extra or furloughed employee. This would have required the use of a regular employee at overtime rates. This overtime payment certainly would entail additional expense to the Company. See Award 1723 (Fourth Division)". This overtime payment certainly would involve "additional expense to the Company:" within the plain and usual language employed in Rule 5-A-2. The expense proviso of that Rule is stated clearly and without qualification and affords no basis for Petitioner's contention. that only additional yardmaster expense may be considered." The claim was denied in Award 1723 (Fourth Division).

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 25th day of January 1963.