

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Bernard J. Seff, Referee

PARTIES TO DISPUTE:

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

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 the Scope Rule and Rule 3-C-2, when it abolished a Group 2 position of Crane Operator at the Car Shop, Renovo, Pennsylvania, Northern Region, effective July 16, 1954, and assigned work of the abolished position to an M. of E. Department Carman Helper not covered by the Clerical Rules Agreement.

(b) The Claimant, H. E. Brosious, should be allowed eight hours pay a day, at the Crane Operator rate of pay, as a penalty, commencing January 4, 1957, and continuing until the violation is corrected. (Docket 520)

EMPLOYEES' STATEMENT OF FACTS: This dispute is between the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees as the representative of the class or craft of employees 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 Employees 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.

The Claimant in this case, H. E. Brosious, is a Group 2 clerical employee of the Carrier at Renovo Car Shop, Renovo, Pennsylvania, Northern Region. He has a seniority date on the seniority roster of the Northern Region in Group 2.

clerical employes by the Clerks' Rules Agreement or otherwise, and that its performance by the Carmen was not in any way violative of the Scope Rule or Rule 3-C-2 of said Agreement.

Therefore, the Carrier respectfully requests your Honorable Board to deny the Employes' claim in this matter.

The Carrier demands strict proof by competent evidence of all facts relied upon by the Employes, with the right to test the same by cross-examination, 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 representative.

(Exhibits not reproduced.)

OPINION OF BOARD: The Carrier maintained a car repair facility at Renovo, Pennsylvania, for many years. Prior to October 5, 1946, a Car Department employe operated a steam crane in car repair operations that required heavy lifting. On October 5, 1946, the Carrier acquired a 3-ton capacity crane, assigned it to the Stores Department at Renovo and assigned a Group 2 clerical employe to operate it. Later, this crane was also utilized to assist the steam crane operated by the Car Department employe.

Thereafter, on December 27, 1951, the 3-ton crane was replaced by a 5-ton capacity Krane Kar. The work performed by this crane was substantially the same as that which was performed by the 3-ton crane, and performed work for the Stores Department in the loading, unloading and handling of material and also aided the 25-ton crane in the performance of car repair work. Sometime about July 16, 1954, the Car Department employes' Organization complained that the operation of the Krane Kar when engaged in car repair work properly belonged to a Car Department employe, and after an investigation, the Carrier agreed and arranged for a Carmen Helper to operate the Krane when it was used on work directly attached to the repair of freight cars.

At the time the operation of the Kar Krane was turned over to the Car Department employes, there existed in the Stores Department a position of Crane Operator assigned to the unloading platform. This employe operated a self-propelled crane of 15-ton capacity. Arrangements were made for this crane operator to operate the smaller Krane Kar when necessary to handle Company materials. If such employe was not available, then some other Group 2 clerical employe was used in the operation of the Krane Kar. This arrangement was in effect without complaint from July, 1954, to January 9, 1957. On the latter date, the Organization filed a claim that the Carrier violated the Clerks' Agreement by using shop craft men to operate the Krane Kar which work should accrue to stores employes.

The instant claim is predicated on the Petitioner's contention that the Carrier violated the Scope Rule of the Agreement when it assigned work previously done by Clerks to the Car Department employes.

The Scope Rule in the instant case defines coverage in terms of positions and not in terms of work. Such a scope rule is general, and the principle governing this type of rule is that the Petitioner has the burden of proving that the work in question was customarily, historically and traditionally performed exclusively by the members of the Petitioner's Organization.

In the case at bar, the record discloses that for 8 years a Clerk operated a crane; then for a period of 3 years a Car Department employe operated a similar crane. This evidence clearly shows that both Organizations for varying periods of time had employes doing the same kind of work. Under this state of facts, it is clear that the Clerks have failed to sustain the burden of proving that members of its Organization exclusively performed the work in question. Under these circumstances, having failed to prove their case on the merits, it becomes unnecessary to dispose of other procedural issues raised in the instant case.

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 Carrier did not violate its Agreement.

AWARD

Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 24th day of January 1964.