Award No. 12175
Docket No. CL-11910

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Michael J. Stack, Jr., 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, by requiring and permitting Yard Master E. C. Butts to perform clerical work at Scissors Yard, Sandusky, Ohio, Lake Region.

(b) The Claimant, Clerk B. M. Emmerick, should be allowed eight hours pay a day from April 9, 1958, through May 9, 1958, and all subsequent dates, as a penalty; any amount due the Claimant in this case to be ascertained jointly by the parties at the time of settlement. [Docket 432]

EMPLOYES' STATEMENT OF FACTS: This dispute is between the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes as the representative 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.

The Claimant, Clerk B. M. Emmerick, was the incumbent of a regular clerical position, Symbol B-119-G, at Scissors Yard, Sandusky, Ohio, Lake Region, tour of duty 11:00 P.M. to 7:00 A.M., rest days Wednesday and Thursday. He has a seniority date on the seniority roster of the Lake Region in Group 1.

To grant the claim of the Employes in this case would require the Board to disregard the Agreements between the parties and impose upon the Carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to this dispute. The Board has no jurisdiction or authority to take such action.

CONCLUSION

The Carrier has shown that the work involved in this dispute, as performed by Yard Masters at Sandusky, Ohio, was not work reserved exclusively to clerical employes by the Clerks' Rules Agreement or otherwise, and that its performance by the Yard Masters was not in any way violative 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: Where the record reveals that work is performed by employes of two crafts at one location for over thirty years, is it a violation of the agreement for the Carrier to continue such practice?

We hold that it is not.

At "Scissors" yard facility of the coal loading Lake Erie part of the Carrier desk work incident to the receipt of coal for loading on ships is performed the year round by Yard Masters.

The volume of work builds up appreciably in the temperate months when the lake is free of ice, necessitating the employment of clerks to assist in the desk work. These clerk positions are referred to as permanent-seasonal. Annually, the employes of the crafts here affected vary from a low of three Yard Masters, six clerks and thirteen extra clerks to a high of twelve Yard Masters, seventeen clerks and two extra clerks.

Each year for thirty years in April or May as the volume of work increases, the seasonal clerk positions are advertised for bid. At the end of the season the clerk positions are abolished and the remaining work is performed by the Yard Masters. Thus, at different times during the year and sometimes simultaneously, the work of making switch lists, figuring tonnage for boats and filing tickets is performed by both clerks and Yard Masters.

In 1958, the Claimant, a clerk, contended that this practice violated the Scope Rule and Rule 3-C-2.

With this position we cannot agree.

These rules are as follows:

"SCOPE

These rules shall constitute an Agreement between The Pennsylvania Railroad Company and its employes of the classifications herein set forth as represented by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes, and shall govern the hours of service, working conditions, and rates of pay of the following positions and employes of The Pennsylvania Railroad Company, subject to such modifications and exceptions as are set forth in Supplemental Agreement 'A':

Group 1 — Clerks as defined in the following paragraph:

Clerk — an employe who regularly devotes not less than four hours per day to the writing and calculating incident to keeping records and accounts, writing and transcribing letters, bills, reports, statements, and similar work, and to the operation of office mechanical equipment and devices, except as provided in Rule 3-C-2. This definition also includes stockmen, shippers and receivers, tallymen, blue printers, baggage checkmen, parcel room attendants or checkers, routemen, receiving and delivery men, foremen and assistant foremen — station or storehouse, excluding shop labor foremen, gang foremen and gang leaders at Altoona Works who supervise shop laborers and storehouse laborers.

* * * * *

3-C-2 (a). When a position covered by this Agreement is abolished, the work previously assigned to such position which remains to be performed will be assigned in accordance with the following:

(1) To another position or other positions covered by this Agreement when such other position or other positions remain in existence, at the location where the work of the abolished position is to be performed.

(2) In the event no position under this Agreement exists at the location where the work of the abolished position or positions is to be performed, then it may be performed by an Agent, Yard Master, Foreman, or other supervisory employe, provided that less than 4 hours' work per day of the abolished position or positions remains to be performed; and further provided that such work is incident to the duties of an Agent, Yard Master, Foreman, or other supervisory employe.

(3) Work incident to and directly attached to the primary duties of another class or craft such as preparation of time cards, rendering statements, or reports in connection with performance of duty, tickets collected, cars carried in trains, and cars inspected or duties of a similar character, may be performed by employes of such other craft or class.

(4) Performance of work by employes other than those covered by this Agreement in accordance with paragraphs (2) and (3) of this rule (3-C-2) will not constitute a violation of any provision of this Agreement."

To invoke the relief available under our prior awards pertaining to the Scope Rule the Claimant must show that the work in question either by the explicit language of the agreement, or, absent that, by custom and practice has been performed exclusively by the employes affected.

The facts fail to support that the work is exclusively that of the Claimant's craft. Nor do we believe that the provisions of 3-C-2 (a) lend themselves to the construction here sought.

The work had for thirty years been performed by Yard Masters during the off season following the abolishment of the seasonal clerical positions. The situation contemplated by 3-C-2 thus does not here arise, since the work claimed is being performed by the same employes as before.

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 Employes involved in this dispute are respectively Carrier and Employes 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 7th day of February 1964.