

Award No. 12451
Docket No. CL-11369

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Arthur W. Sempliner, 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 4-A-1 (i), when it required and permitted persons not employed by the Carrier and not subject to the Clerks' Rules Agreement, to perform the work ordinarily performed by a Receiving and Delivery Clerk five days a week, at Court Street Freight Station, Cincinnati, Ohio, Buckeye Region.

(b) The Claimant, Receiving and Delivery Clerk G. Pantaleo, should be allowed a three-hour call for Saturdays, August 18 and 25, and September 8 and 15, 1956. [Docket 247]

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, Mr. G. Pantaleo, is the incumbent of a regular position of Receiving and Delivery Clerk at Court Street Freight Station, Cincinnati, Ohio, Buckeye Region. He has seniority dates on the seniority rosters of the Buckeye Region in Group 1 and Group 2.

Under the existing circumstances the disputed work was not the responsibility of the Carrier, and for the specific reasons herein given its performance on the claim dates in the manner and circumstances previously described was not in violation of any provisions of the Clerks' Rules Agreement. It follows, therefore, that the Claimant is not entitled to the compensation requested in paragraph (b) of the claim, and your Honorable Board is respectfully requested to deny the claim in its entirety.

III. Under The Railway Labor Act, The National Adjustment Board, Third Division, Is Required To Give Effect To The Said Agreement And To Decide The Present Dispute In Accordance Therewith.

It is respectfully submitted that the National Railroad Adjustment Board, Third Division, is required by the Railway Labor Act to give effect to the said Agreement and to decide the present dispute in accordance therewith.

The Railway Labor Act in Section 3, First, subsection (i), confers upon the National Railroad Adjustment Board the power to hear and determine disputes growing out "of grievances or out of the interpretations or application of Agreements concerning rates of pay, rules or working conditions." The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the Agreement between the parties thereto. To grant the claim of the Employees in this case would require the Board to disregard the Agreement 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 was not in any way violative of the Clerks' Rules Agreement, but rather was in conformity with the principles governing the proper distribution of work at this Carrier's freight stations among its own employees and employees of outside trucking companies, as established by authoritative decisions rendered in previous disputes involving these same issues; also, that the right of entitlement to the work was vested in the employees who did perform it by virtue of the legal rights as tenants of the Acme company to conduct its business on property occupied under a proper lease.

Therefore, the Carrier respectfully submits that your Honorable Board should deny the Employees' claim in this matter.

OPINION OF BOARD: Claimant seeks a three hour call for three specified Saturdays when other than Carrier employees performed the work of checking, sorting, and preparing reports in the Acme Fast Freight section of the Court Street Freight House in Cincinnati. The space in the Freight House occupied by Acme is leased to them, and has a floor area in excess of 1,700 square feet. Inbound freight is checked off the cars into this area, by Carrier employees. A delivery receipt for each carload is then presented to Acme. The freight is loaded from the floor of this section of the freight house onto Acme trucks, or hired trucks, by Acme employees. When the freight is delivered to the truck drivers, they receipt for the same on a form, one copy of which is delivered to Acme, and one to the Carrier.

The checking of freight in the Acme section is not Claimant's sole function. During meal periods Claimant relieves in the Carrier's inbound delivery section, and during heavy outbound movement (3:00 P. M. to 5:00 P. M.) in the outbound section.

It thus appears the Claimant spends only about one-half of his time in the Acme section performing the work in question. It is equally true that Claimant assists Acme employes in performing the work, which Acme employes perform the work without the Claimant's assistance when he is working in the outbound section or elsewhere.

It is quite apparent that the work in question was not only not the work of the Carrier, and the Carrier performed a part of it solely as an accommodation, but that the work was performed by Acme employes exclusively for a portion of each day. Thus the Carrier was not required to perform this work at any time and the call not mandatory under the contract.

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 23rd day of April 1964.