

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

William H. Coburn, 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 Rules 2-A-1 and 2-A-2, by requiring and permitting a Freight Car Repairman, F. A. Goldsberry, who holds no clerical seniority and is not covered by the Clerks' Rules Agreement, to perform eight hours clerical work each day in the Car Shop Office, Columbus, Ohio, Buckeye Region.

(b) A clerical position be established and bulletined in order to terminate this claim, and that Clerk F. A. Peters be allowed eight hours pay a day, as a penalty, retroactive ninety days from October 22, 1957, and all subsequent dates until the violation is corrected.
[Docket 472]

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.

On, and prior to, the date of the institution of this claim, Claimant F. A. Peters held a position on the Group 1 Extra List under the jurisdiction of the Master Mechanic, Columbus, Ohio, Buckeye Region. He has a seniority date on the seniority roster of the Buckeye Region in Group 1.

not the Claimant is entitled to eight (8) hours' pay a day as a penalty. However, in the event that, contrary to the facts, it is decided that the Agreement has been violated in this case, the Carrier has shown that the Claimant would only be entitled to actual loss of earnings, if any, or, to say it in another way, to be made whole.

III. Under The Railway Labor Act, The National Railroad 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 interpretation 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 to it. To grant the claim of the Employees in this case would require the Board to disregard the Agreement between the parties thereto 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 Freight Car Repairman performs no clerical work whatsoever; that no provision of the Agreement has been violated in this case; and that the Claimant is not entitled to the compensation which he claims.

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

(Exhibits not reproduced.)

OPINION OF BOARD: Petitioner here alleges a violation of the Clerks' Agreement by the Carrier when it used an employe not covered by the Agreement and occupying a position of Freight Car Repairman to perform certain clerical work in the Car Shop Office at Columbus, Ohio.

In accordance with the requirements of Section 3, First (j) of the Railway Labor Act, formal notice of the pendency of the dispute was served by the Division on the Transport Workers Union of America, which Organization declined to participate herein. Accordingly, the Board may properly proceed to a consideration of the merits of the claim.

The Agreement in evidence contains a Scope Rule which, in pertinent part, says:

"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.

* * * * *

"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."

Rule 3-C-2 is entitled "Assignment of Work" and provides a procedure to be followed in assigning the work of abolished positions. It is not applicable here.

Where, as here, the Scope Rule of an Agreement is general in character and does not purport to describe or define the particular work in dispute, the party asserting a claim thereto has the burden of showing by a preponderance of the evidence of record, that traditional custom and practices on the property establish its exclusive right to perform that work. (See Award 8331 involving these same parties).

The duties performed by the Car Repairman in this dispute are described by the Carrier as follows:

"Mr. Goldsberry prepares a copy of MP-200, Wreck Report, in pencil from the records he maintains as a part of his duties as a Freight Car Repairman.

He gives the pencil copy to a Clerk-Typist for typing, distribution and filing.

He also makes out CT 228, Damage to Lading, forms and they are handled in the same manner as the MP-200, Wreck Reports.

Mr. Goldsberry makes up the MP-81, Report of Loose or Broken Wheels, in pencil, inasmuch as the form requires marking of a printed diagram thereon, and the distribution and filing of these reports is made by clerks.

He prepares form No. 639, Information for Billing Against Foreign Lines for Use of Wreck Train, this form being used in connection with the preparation of the MP-200, Wreck Report.

He also prepares form 688, Information in Connection with Wrecks Cleared by the Columbus Wreck Train, and this is then given to the clerks for typing, distribution and filing."

Petitioner asserts that the primary duty of a Car Repairman is, as the title indicates, to repair cars; that Mr. Goldsberry does not repair cars, but spends 8 hours each day in performing clerical duties usually and customarily carried out by clerical employes covered by the Agreement. It points to the definition of a "Clerk" under Group 1 of the Scope Rule as supporting this contention.

It is true, as Petitioner avers, that the Car Repairman here did perform the described clerical duties during his daily tour of duty and did not repair cars. The record is also clear that beyond mere assertions by Petitioner, there

is no evidence of probative value showing the particular work had once been performed by Clerks and had then been removed from Agreement coverage to be assigned to the Car Repairman or anyone else. Here, the Petitioner must establish, in the face of Carrier's showing that the duties performed were a necessary incident to the car repair work and Clerks also performed some of that work—typing, distribution and filing—that it was work usually and customarily performed by employees of the clerical craft on this property. Failure to do so is fatal to the success of the claim. (Cf. Award 7031; also see Awards 9639, 9746, 9822 involving these same parties, and directly in point).

In view of the foregoing, the claim will be denied.

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 30th day of April 1964.