

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Lee R. West, 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 (GL-4856) that:

(a) The Carrier violated the Rules Agreement, effective May 1, 1942, except as amended, particularly the Scope Rule, and Rules 2-A-1, 2-A-2 and 3-B-1, when it assigned Group 2 janitor work to Group 1 clerical positions and employes at the Yard Office, Richmond, Indiana, Buckeye Region.

(b) The Claimant, H. E. Robinson, should be allowed a four hour call for October 14, 1957, and all subsequent dates until the violation is corrected, as a penalty. [Docket 634]

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.

On and prior to the date the instant case originated, November 1, 1957, the Claimant, H. E. Robinson, was working as an extra Group 2 employe at the Passenger Station, Richmond, Indiana, Buckeye Region, performing janitor work on less than a full time basis. He has a seniority date on the seniority roster of the Buckeye Region in Group 2.

With respect to paragraph (b) of the claim in which payment of a 4-hour call is requested for October 14, 1957, and all subsequent dates until the "violation is corrected," the Carrier has shown that no violation of the Clerks' Rules Agreement occurred in this case, and, therefore, it is unnecessary for your Honorable Board to decide this secondary issue.

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 and 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 claims 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 assignment and performance of the work involved in this dispute was not in violation of any provisions of the Clerks' Rules Agreement, but, on the contrary, was accomplished strictly in accordance therewith. Therefore, the Carrier respectfully submits that your Honorable Board should deny the Employees' claim in its entirety.

(Exhibits not reproduced.)

OPINION OF BOARD: It is the opinion of this Board that the Agreement involved has not been violated.

This claim arises on behalf of H. E. Robinson, a Group 2 janitor on less than a full time basis, at the Passenger Station, Richmond, Indiana. On October 14, 1957, the Carrier posted notice requiring the Group 1 teletype clerks to clean the yard office. The Group 1 clerk of each trick spends approximately 40 minutes per trick cleaning said yard office.

The Organization contends that Carrier violates the Agreement by requiring Group 1 clerks to perform such work where Group 2 employees are available on less than a full time basis. However, pertinent parts of the Scope Rule provide as follows:

"SCOPE.

These Rules shall constitute an Agreement between the Pennsylvania Railroad Company and its employees of the classifications

herein set forth as represented by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, and shall govern the hours of service, working conditions, and rates of pay for the following positions and employees 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 employee 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.

Group 2—Other Office, Station and Storehouse Employees of the following Classifications:

* * * * *

Janitors

* * * * *

When the duties of a position covered by this Agreement are composed of the work of two or more classifications herein defined in Groups 1 and 2, the classification or title of such a position shall be determined by the preponderance of the work that is assigned to such position."

Carrier contends that the last paragraph quoted above contemplates Group 1 employees performing some Group 2 work as a part of their regular duties, so long as the preponderance of their duties continues to be Group 1 work. We agree.

In the case before us, the Group 1 clerks are required, as a part of the regular duties, to perform Group 2 work briefly each trick. Their duties are still predominantly Group 1 duties.

It is, therefore, the opinion of this Board that the Agreement has not been violated and the claim must 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.