

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Joseph S. Kane, 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-4824) that:

(a) The Carrier violated the Rules Agreement, effective May 1, 1942, except as amended, particularly the Scope Rule, when it abolished positions of Store Attendant, Symbol Nos. S-10, S-13 and S-50, at East Altoona Enginehouse and Oil House Altoona, Pennsylvania, Pittsburgh Region, and assigned portions of the remaining work of the abolished positions to employees not covered by the Scope of the Clerical Agreement.

(b) Claimants G. O. Gardner, C. D. Lear and M. E. Curry, should be allowed eight hours' pay a day commencing July 1, 1957, and continuing until the violation is corrected. (Docket 598)

EMPLOYEES' STATEMENT OF FACTS: This dispute is between the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees as the representatives of the class or craft of employees in which the Claimants 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 Claimants in this case, G. O. Gardner, C. D. Lear and M. E. Curry, were the incumbents of regular positions of Store Attendant at East Altoona Enginehouse and Oil House, Altoona, Pennsylvania, Pittsburgh Region, prior to July 1, 1957. They each have seniority dates on the seniority roster of the Pittsburgh Region in Group 2.

Section 3 (p) of the Railway Labor Act, dealing with suits in the Federal Courts for the enforcement of those awards of your Honorable Board which contain a monetary award, provides, in part:

" . . . Such suit in the District Court of the United States shall proceed in all respects as other civil suits, except that on the trial of such suit the findings and order of the Adjustment Board shall be prima facie evidence of the facts therein stated."

This provision contemplates that such suit "shall proceed in all respects as other civil suits" with the exception that the findings of the Adjustment Board as to the stated facts will be accepted as prima facie evidence thereof. It is clear this provision contemplates the application of the same rule of damages and the same rule against penalties in enforcing contracts as are applied in civil suits generally. An award contrary to these principles would be unenforceable as a matter of law.

For the foregoing reasons, it is respectfully submitted that your Honorable Board may not properly enter such an award in this case.

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 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 established that there has been no violation of the applicable Agreement in the instant case and that the Claimants are not entitled to the compensation which they claim.

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

(Exhibits not reproduced.)

OPINION OF BOARD: The Claimants held the position of store attendants at East Altoona Enginehouse and Oil House on the second and third trick. On July 1, 1957, these positions were abolished and instead of dispensing materials over the counter and keeping records, the mechanics obtain their own supplies and the records were processed by the first trick store attendant.

The Claimants contended that the Scope Rule and Rule 3-C-2 were violated when the store attendant positions on the second and third trick were abolished and the mechanics drew their own supplies.

The Carrier contended that the position was abolished and the remaining work was assigned to the first trick store attendant. Furthermore, the Carrier contends that the Scope Rule does not give the Claimants the exclusive right to the work here in dispute. That the function of issuing supplies and materials ceased to exist, and the mechanics were procuring, securing or drawing supplies for their own use. Thus, neither the Scope Rule or Rule 3-C-2 was violated.

Thus, the question to be determined in this dispute is: Was the Scope Rule or Rule 3-C-2 of the Clerks' Agreement violated when under the facts and circumstances, as stated herein, mechanics drew their own supplies?

This Board is of the opinion that the facts and circumstances of this dispute have been determined in Award 10894 and 12341.

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 according to Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois this 21st day of May 1964.