

Award No. 14285
Docket No. CL-15142

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Don Harr, 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-5622) that:

(a) The Carrier violated the Rules Agreement, effective May 1, 1942, except as amended, particularly the Scope Rule, when it required the second trick Yard Master, West Brownsville Junction, Pennsylvania, Pittsburgh Region, to perform the assigned duties of clerical position, Symbol G-92, each Sunday and Monday, the rest days of position G-92.

(b) Clerks C. E. Vesley and G. P. Cindric should be allowed eight hours' pay a day, for Sunday and Monday, December 10 and 11, 1961, and all subsequent Sundays and Mondays until the violation is corrected. (Docket 1411)

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 Claimants in this case held positions 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.

Following discussion, the Superintendent denied the claim by letter dated May 21, 1962. The Division Chairman then requested preparation of a Joint Submission, a copy of which is attached as Exhibit "A".

At a meeting on October 16, 1963, the General Chairman presented a claim, reading essentially the same as that listed here before the Board, to the Manager, Labor Relations, the highest officer of the Carrier designated to handle such disputes on the property. The Manager, Labor Relations denied the claim by letter of December 16, 1963, a copy of which is attached as Exhibit "B".

The claim was re-listed for discussion at a special meeting on April 21, 22, and 23, 1964. By letter dated May 8, 1964, the Manager, Labor Relations reaffirmed his previous denial.

Therefore, so far as the Carrier is able to anticipate the basis for this claim, the questions to be decided by your Board are whether Yardmasters were used at West Brownsville Junction to perform work on Sundays and Mondays in violation of the Clerical Scope Rule and whether the Claimants are entitled to the compensation claimed.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant C. E. Vesley held regular assignment as Clerk-Relief, Relief No. 7, under the Assistant Train Master at Shire Oaks from January 28, 1961 to December 12, 1961. After December 12, 1961, the Claimant held position as Clerk-Extra, Symbol XY-5, under the Assistant Train Master at Shire Oaks.

Claimant G. P. Cindric held position as Clerk-Extra, Symbol XY-3, under the Assistant Train Master at Shire Oaks.

Sunday and Monday are the rest days of the second trick yard clerk at West Brownsville Yard Office. There is no relief position assigned to relieve the second trick yard clerk at West Brownsville Yard Office on Sunday and Monday. On Sundays and Mondays there are no regularly assigned clerks on duty on the second trick at West Brownsville Junction Yard Office.

A Yard Master is assigned at West Brownsville Junction on second trick, Sunday and Monday.

The Employees contend that the Agreement was violated when Carrier allowed the second trick yard master to perform work on Sundays and Mondays that was done Monday through Friday by Clerks.

Carrier asserts that the present dispute is not properly before the Board and further alleges the claim was not presented on the property. There are variances in the form of the claim but we do not feel these variances are fatal. The Carrier can recognize the existence of the claim now before the Board.

Award 3256 (Carter) states:

"The Carrier urges that the claim originally made is not the same claim that is now before this Board. It is a fact established by the record that variances in the form of the claim occurred from

time to time until the claim reached this Board. In this respect, it was not intended by the Railway Labor Act that its administration should become super-technical and that the disposition of claims should become involved in intricate procedures having the effect of delaying rather than expediting the settlement of disputes. The subject matter of the claim, — the claimed violation of the Agreement, — has been the same throughout its handling. The fact that the reparations asked for because of the alleged violation may have been amended from time to time, does not result in a change in the identity of the subject of the claim. The relief demanded is ordinarily treated as no part of the claim and consequently may be amended from time to time without bringing about a variance that would deprive this Board of authority to hear and determine it. No prejudice to the Carrier appears to have resulted in the present case and the claim of variance is without merit."

See also 6656 (Wyckoff) 10918 (Boyd) and 10921 (Boyd).

It is important that this Board not become "super-technical" and that we attempt to avoid a multiplicity of claims. We will dispose of this dispute on the issues.

The issue here is whether Carrier can assign work to a yard master, on the clerical employees rest days, when clerical employees perform this work the other five days of the week.

In Award 12137 (Kane) we held:

"The Scope Rule does not describe the work reserved to the class of employees covered by it. Thus it is incumbent upon the Claimant to establish that the work so claimed has traditionally and customarily been performed on the property by employees of the class or craft to which he belongs. Under the circumstances here the Claimants had performed the work from Monday to Friday inclusive for some time and it must be presumed that they did so under the provisions of the Scope Rule

* * * * *

"We are further of the opinion that if the Scope Rule and Rule 4-A-1 (i) of the Clerks Agreement protected the positions five days per week and on the sixth and seventh days no significant circumstances existed other than convenience it appears that the assignment under the rules cited belonged to the Claimants." Award 12137 involves the same parties as the instant case.

We believe that the record clearly indicates that the work involved was done Tuesday through Saturday by clerical employees. We concur in the findings of Award 12137, we will sustain the claim.

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 violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 31st day of March 1966.