



Award No. 16544
Docket No. CL-16952

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur W. Devine, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY, AIRLINE 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-6210) that:

(a) The Carrier violated the Rules Agreement, effective May 1, 1942, except as amended, particularly the Scope Rule, when it used Taxi Cabs, and Cab Drivers who were not employes of the Carrier to perform assigned duties of Train and Engine Crew Callers in the Conway area, Conway, Pennsylvania, Pittsburgh Division, Central Region.

(b) The following employes should be allowed pay for the number of hours shown for each date following their names:

S. A. Hanna - 8 hours for March 14 and 17, 1964.

H. W. Fricke - 16 hours for March 5, and 8 hours for March 12, 16, 18, 19, 23 and 25, 1964.

W. J. Ruth - 8 hours for March 3 and 31, and 16 hours for March 30, 1964.

F. E. Wilson - 8 hours for March 2, 3, 8, 9, 15, 16, 22, 29, 30, and 16 hours March 17, 1964.

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 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, reprinted as of September 1, 1965, covering Clerical, Other Office, Station and Storehouse Employees between the Carrier and this Brotherhood

of the use of taxis to transport crews in the Conway area and whether or not the Claimants are entitled to the compensation which they claim.

(Exhibits not reproduced.)

OPINION OF BOARD: The claim herein arose at Carrier's Conway, Pennsylvania, Yard, because of train and engine service employees working in and around Conway Terminal, being transported by taxicab between the various reporting or relieving points and work locations in the area.

In the handling of the dispute on the property the only rule relied upon by the Petitioner was the Scope Rule. Our consideration of the claim confronting us will be confined to the alleged violation of the Scope Rule.

In prior Awards of this Division involving the same Scope Rule as involved herein, which is general in character and does not purport to describe or define work, we have held that it is necessary to look to past practice, tradition and custom to determine whether the work complained of is reserved exclusively to employees covered by the Agreement, and that the burden of proving that such work is reserved exclusively to employees covered by the Agreement by tradition, custom and practice is upon the Petitioner. We have also held that the Petitioner must show conclusively that the past practice, tradition and custom is co-extensive with Carrier's system. Awards 10615, 11963, 12556, 12923. The Petitioner herein has not met the requisite burden of proof.

The Petitioner attempts to assert a right to the work involved by showing that one of the bulletined primary duties of the crew caller's position is "drive station wagon transporting engine and train crews." We have previously held that the designation of certain primary duties in advertising bulletins does not convey an exclusive right to the work involved. Awards 12177, 13195, 12047, 7166, among others.

The Petitioner also alleges that the Carrier has paid a total of 322 three-hour calls for alleged violations similar to those involved herein. The Carrier points out that the document submitted by the Petitioner in this regard does not contain any indication as to what those three-hour calls involved and does not prove that the work of transporting train and engine service employees has been exclusively assigned to crews callers. In any event, the Board has held on numerous occasions that such settlements, made on the property, do not constitute binding interpretations of agreements. Awards 12383, 9639, 6964, 4534, among others.

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 2nd day of August 1968.