

Award No. 17063

Docket No. CL-17819

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Paul C. Dugan, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP
CLERKS, FREIGHT HANDLERS, EXPRESS AND
STATION EMPLOYES**

**PENN CENTRAL COMPANY — SOUTHERN REGION
(Formerly New York Central Railroad — Southern District)**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6481) that:

1. Carrier violated and continues to violate the Clerks' Agreement, specifically Rule 1 — Scope, and the May 19, 1959 Memorandum of Agreement at Harrisburg, Illinois on September 7, 1966, when Carrier removed work from employes covered by the Clerks' Agreement and permitted such work to be performed by employes not covered by the Agreement.

2. Carrier shall now be required to compensate Messrs. J. Partain, C. Harlow, H. Harlow, T. Randolph, J. Stricklin, A. V. Day, W. Cullum, T. Cain, G. E. Bailey, C. Cross, D. D. King, B. C. Bailey and D. R. Ward, coal car cleaners at Harrisburg, Illinois for eight hours' pay on September 7, 1966 and all subsequent dates until the violation has been corrected, claimants compensated and work restored to the employes covered by the Clerks' Agreement.

EMPLOYES' STATEMENT OF FACTS: This dispute is between the Brotherhood of Railway, Airline 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 a position, and the New York Central Railroad (Southern District), now the Penn Central; hereinafter referred to as the Brotherhood and the Carrier respectively.

There is in effect between the Carrier and this Brotherhood a Rules Agreement, effective July 22, 1922, amended January 5, 1951, covering Clerical, other Office and Station employes. Copies of this agreement were filed with the National Railroad Adjustment Board by the Carrier.

OPINION OF BOARD: The issue herein is whether or not the Carrier violated the Agreement when it permitted coal mining company employees and not Claimants herein to clean coal cars.

The Organization contends that the Memorandum of Agreement of May 19, 1959, and the Scope Rule were violated when Carrier permitted coal cars to be taken to the coal mines from Harrisburg without being first inspected and cleaned by Carrier's personnel, but later were permitted to be cleaned by coal mine employees of the various coal mining companies.

The Carrier's position is that the May 19, 1959 Agreement does not require Carrier, to the exclusion of others, to clean the coal cars before they are delivered to the coal mines for loading; that the Scope Rule does not grant the exclusive right to Claimants to clean said coal cars; that the Carrier is not required by statute or regulation to clean said coal cars.

Examination of the Memorandum of Agreement of May 19, 1959, strongly relied on by the Organization, shows that said Agreement does not require Carrier to clean the coal cars in the first instance. Further, said Agreement does not in any way show an intent to have Claimants exclusively perform said work at Harrisburg.

Second, having a general Scope Rule, the Organization did not meet its burden of proving that system wide, by history, custom and tradition, Claimants have performed the work in question.

Therefore, it is our conclusion that Carrier did not remove work from the Agreement and thus 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 16th day of April 1969.

Keenan Printing Co., Chicago, Ill.

Printed in U.S.A.