

Award No. 18927

Docket No. CL-15628

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur W. Devine, Referee

PARTIES TO DISPUTE:

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

THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5756) that:

(a) The Carrier violated the Rules Agreement, effective May 1, 1942, except as amended, particularly the Scope Rule, when it abolished the Group 2 position of Chauffeur held by Joseph LaForte in the Truck Pool Service at Exchange Place, Jersey City, New Jersey, New York Division, Eastern Region, effective July 1, 1960, and assigned the work of the abolished position to employees of the Maintenance of Way Department who were not covered by the Scope of the Clerical Rules Agreement.

(b) Claimant Joseph LaForte should be allowed eight hours' pay a day for July 1, 1960, and all subsequent dates until the violation is corrected. (Docket 1493)

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 employees 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 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 Claimant in this case, Mr. Joseph LaForte, holds a Group 2 position of Chauffeur in the Truck Pool Service at Exchange Place, Jersey City, New Jersey, New York Division, Eastern Region. He has a seniority date on the seniority roster of the New York Division in Group 2.

subsequently requested the preparation of a Joint Submission for the further handling of this matter by the General Chairman with the Manager, Labor Relations, the highest officer of the Carrier designated to handle disputes on the property. A copy of the Joint Submission is attached as Exhibit "B."

This matter was discussed by the General Chairman with the Manager, Labor Relations at a meeting held on April 15, 1964, following which the latter officer denied the claim by letter dated April 27, 1964. A copy of the Manager, Labor Relations' letter of April 27, 1964, is attached as Exhibit "C."

The claim was relisted for discussion at a special meeting held on January 19, and 20, 1965, following which the Manager, Labor Relations, in a letter dated February 11, 1965, reaffirmed his previous denial.

Therefore, so far as the Carrier is able to anticipate the basis of the Employees' claim, the questions, to be determined by your Board are (1) whether the operations of a truck assigned to the Supervisor, Track No. 2 at Jersey City by a Maintenance of Way Chauffeur for the performance of work exclusively for the Maintenance of Way Department violated the Scope Rule of the Clerical Rules Agreement and (2) whether the claimant is entitled to the compensation which he claims.

(Exhibits not reproduced.)

OPINION OF BOARD: The claim herein alleges that the Agreement was violated when the Carrier abolished a Group 2 Chauffeur position and assigned the work of operating a truck for Supervisor of Track No. 2 to employees of the Maintenance of Way Department.

The record is clear that notice requirements as mandated by the United States Supreme Court have been met by the Board.

The Petitioner relies primarily on the Scope Rule of the Agreement. In prior Awards of this Division involving the same Scope rule as is 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. Awards 16544, 11963.

The record in the present docket, including the submission filed by the Brotherhood of Maintenance of Way Employees, shows conclusively that by tradition, custom and practice, the operation of trucks in the Maintenance of Way Department is not reserved exclusively to employees covered by the Clerks' Agreement. This being the situation, the abolishment of the position involved and the assignment of the operation of the truck to employees of the Maintenance of Way Department, was not in violation of the Clerks' Agreement. The claim will, therefore, be denied.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 7th day of January 1972.