NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 19789

THIRD DIVISION Docket Number CL-19580

Alfred H. Brent, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes
(George P. Baker, Richard C. Bond, Jervis Lsngdon, Jr., and Willard Wirtz, Trustees of the Property of Penn Central Transportation Company, Debtor

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-7010) that:

(a) The Carrier violated the Rules Agreement, effective February 1, 1968, particularly the Scope by using Scott Brothers' driver and tractor-trailer to perform the assigned duties of employes covered by the Scope of the Rules Agreement transporting company material between other storehouse locations and the main storehouse, 30th & Race Streets, Philadelphia, Pa., Eastern Region, Philadelphia Division seniority district.

(b) Claimant John Grant, Jr., Chauffeur. be compensated one day's pay for Thursday, October 31, 1968, on account of this violation. (Docket 2444)

OPINION OF BOARD: The Carrier used a Scott Brothers tractor trailer and driver to transport materials from outlying Company storehouses to the main storehouse at 30th and Race Streets, Philadelphia. Pa. The Organization contends that this is a violation of the Scope Rule and that the claimant is entitled to be compensated for one day's pay for Thursday, October 31, 1968.

When the subcontracted work is of such a nature as not to be considered exclusively the work of the claimant's classification, then failure of the Carrier to assign the work to the claimant is not a violation of the Scope Rule. Award No. 13280 (Reagan) between the same parties, the same Scope Rule and a similar factual situation, clearly sets forth the criteria!

"In this situation of a system-wide Agreement the Claimants must satisfy

1. The test of exclusivity in order to prevail; that is, the work must be shown through custom, practice, and tradition to be the exclusive possession of Claimants. Conform Award No. 11805 (Dolnick) and others.

2. The test of uniform practice, that is, that they have exclusively performed the claimed work. Conform Award No. 12360 (Dorsey) and others.

"Upon a careful examination of this record in the light of the foregoing rules the claim cannot be sustained. The facts do not establish exclusivity and uniformity.

"It is mandatory on the part of Claimants that they show an exclusive right to the work claimed. Failure to so establish is fatal to their claim."

Similar claims have come before this Board on so many occasions that the principle should be considered stare decisis.

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

The Agreement has not been violated.

A W A R D

The claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 31st day of May 1973.