

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Herbert B. Rudolph, Referee

PARTIES TO DISPUTE:

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

PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

G. B. Cercone, S. D. Tanczuk, E. F. Strochein, R. E. Dennetta, Domenico DiLucento, F. X. Blatnik, Milos Krivokuca, J. J. Ersik, Jr., Hymen Liff, Agostino Sparagna, H. T. Mitchell, G. A. Campbell, and A. L. Pollock, be allowed one day's pay at punitive rate for Sunday, April 29, 1945, due to the failure of the Carrier to utilize their services on their relief day, and then using employees not covered by the Scope of the Rules Agreement on subsequent days in addition to the regular force to perform the work.

EMPLOYEES' STATEMENT OF FACTS: In accordance with a practice of long standing which is partly embodied in an Agreement, dated July 1, 1945, this claim was progressed to the "chief operating officer of the carrier designated to handle such disputes" by means of a joint submission. A copy of this joint submission is shown as Exhibit "A." The carrier has previously notified the Organization in other cases that it is unwilling to join with us further in submitting such dispute to this Board. Final decision of the carrier is contained in its letter of March 15, 1946, copy of which is shown as Exhibit "B."

The "Joint Statement of Agreed Upon Facts" embodied in Exhibit "A" are also the "Employees' Statement of Facts" and are here shown for ready-reference:

"Claimants are regularly employed at Pitcairn, Pa., at locations indicated, with occupation, symbol number, rate of pay, tour of duty and relief day as shown below:

Location	Name	Occupation	Symbol Number	Rate	Tour of Duty	Relief Day
SD No. 6	G. B. Cercone	Shpr.-Rec.	CC-23	79c	6:50A-3:20P	Sunday
"	S. D. Tanczuk	"	CC-427	79c	one-half hour	"
"	E. F. Strochein	"	CC-21	79c	lunch period	"
No. 2 Repr. Yd.	R. E. Dennetta	Laborer	CC-355	65c-67c	"	"
SD No. 8	R. DiLucento	Assgd. Lab.	CC-195	65c-67c	"	"
"	F. S. Blatnik	Store Att'd.	CC-1	77c	"	"
"	M. Krivokuca	Shpr.-Rec.	CC-14	79c	"	"
"	John Ersik, Jr.	Assgd. Lab.	CC-192	67c-70c	"	"
"	Hymen Liff	Shpr.-Rec.	CC-22	79c	"	"
"	A. Sparagna	Laborer	CC-219	65c-67c	"	"
SD No. 6	H. T. Mitchell	Shpr.-Rec.	CC-8	79c	"	"
"	G. A. Campbell	"	CC-19	79c	"	"
"	A. L. Pollock	Laborer	CC-215	65c-67c	"	"

deprived of any work on that day which rightfully belonged to them. Rule 4-A-2 requires the Carrier to make penalty payments to employees required to work on Sundays, and it is inconsistent to argue that employees may compel the Carrier to use them on Sundays where in the Carrier's judgment there is no need for their services.

This claim is based on a theory for which there will be found no support in the Agreement. It is significant that the Employees have cited no particular provision of the Agreement as entitling them to the compensation claimed. It might be pointed out that if the position of the Employees were sustained it would require the Carrier in such circumstances to work employees on their rest day whenever there was work remaining on hand at the end of the sixth day, even though such action might mean there would be no work for the force on Monday. For example, suppose in the instant case the force had been worked on Sunday and all, or the major portion, of the cars then on hand had been unloaded. If only a few cars, or none at all, arrived at Pitcairn by Monday morning, the Carrier would have had its regular force on hand with little or no work to be performed.

The contention of the Employees in the instant case was that the Storekeeper's Department should have anticipated that other cars would arrive over the week-end. This is purely speculative. The Storekeeper had no knowledge of the number of cars to arrive nor was there any available source from which to obtain this information. No one could guarantee at the close of business on Saturday that any certain number of cars would arrive over the week-end. Even if it were known that certain cars were enroute, such anticipation could prove erroneous by reason of wrecks, floods, or other interruptions to traffic. Based on the situation which existed on Saturday, April 28th, it was the judgment of the Storekeeper that it was unnecessary to work the force on Sunday. Since no other employees were used on that day to perform work accruing to the Claimants there is no basis for the claim.

It is, therefore, respectfully submitted that this claim should be denied.

III. Under the Railway Labor Act, the National Railroad Adjustment Board, Third Division, is Required to Give Effect to the Said Agreement and to decide the Present Dispute in Accordance Therewith.

It is respectfully submitted that the National Railroad Adjustment Board, Third Division, is required by the Railway Labor Act to give effect to the said Agreement, which constitutes the applicable Agreement between the parties, and to decide the present dispute in accordance therewith.

The Railway Labor Act, in Section 3, First, subsection (i) confers upon the National Railroad Adjustment Board the power to hear and determine disputes growing out of "grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions." The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the agreement between the parties to it. To grant the claim of the Employees in this case would require the Board to disregard the agreement between the parties hereto and impose upon the Carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to this dispute. The Board has no jurisdiction or authority to take any such action.

CONCLUSION

The Carrier has established that under the applicable Agreement the Claimants are not entitled to the additional compensation which they claim.

Therefore, the Carrier respectfully submits that your Honorable Board should dismiss the claim of the Employees in this matter.

OPINION OF BOARD: This claim comes to the Board on an agreed statement of facts set forth in the record. The claim is for the punitive overtime rate for Sunday, April 29, 1945. No work was performed on this Sunday. The fact that it had been the practice to work local store forces

on Sunday when conditions required, gave Claimants, whose assigned relief day was Sunday, no right to work on Sunday. Since no work was performed on Sunday, and this claim being for the punitive Sunday rate, it follows that the claim must be denied. Whether the Carrier had a right to use employees not covered by the agreement for work subsequent to Sunday, April 29, we express no opinion.

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 no violation of the Agreement is shown.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 11th day June, 1947.