

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Herbert B. Rudolph, Referee

PARTIES TO DISPUTE:

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

PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that Delivery Clerks, P. D. Lee, J. J. Daudigan, etc. be paid four hours' pay at punitive rate for March 27 and April 3, 1943, June 19, 1943, and all subsequent Saturdays until adjusted, due to being relieved at close of regular tour of duty by freight truckers who were paid at Delivery Clerks' rate, depriving the claimants of overtime.

EMPLOYEES' STATEMENT OF FACTS: The claimants are regularly assigned Delivery Clerks at Pittsburgh-11th Street Freight Station, Pittsburgh, Pa. Their names are shown on the Group 1 seniority roster for the Conemaugh Division.

At the completion of their regular tour of duty on the dates mentioned in the claim, these Delivery Clerks were cut off duty and Freight Truckers were assigned to their positions on a straight time basis at the Delivery Clerks' rate of pay. Freight truckers are shown on the Group 2 Seniority roster for the Conemaugh Division seniority district. The Conemaugh Division is an operating division and constitutes a separate seniority district divided into two groups (Groups 1 and 2) and separate seniority prevails in this district by groups, as such groups are defined in the scope of the Rules Agreement.

The Delivery Clerks presented claim for four hours' compensation at the overtime rate on the basis that they should have been continued on duty on their Group 1 positions on an overtime basis in lieu of having the work performed by Group 2 Freight Truckers at the straight time rate.

POSITION OF EMPLOYEES: The question at issue in this case is whether the carrier may use Group 2 employees to perform work accruing to Group 1 employees to avoid the payment of overtime to Group 1 employees who normally perform such work and who were available to perform such work.

The assignment of such work to Group 2 employees as outlined in this case is a violation of the Rules Agreement, effective May 1, 1942. The following Rules of the Agreement are applicable:

Scope Rule

"These Rules shall constitute an Agreement between The Pennsylvania Railroad Company and its employees of the classifications herein set forth as represented by the Brotherhood of Railway and

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

OPINION OF BOARD: The question presented by this record is whether the Carrier is required to use Group 1 employees on an overtime basis to perform clerical duties when there are available qualified Group 2 employees who can be used for such service.

The Scope Rule of the Agreement provides for the two groups of employees. Rule 3-B-1 (a) provides that separate seniority shall prevail by groups, as such groups are defined in the Scope Rule. Rule 3-D-1 (a) provides that separate seniority rosters shall be maintained by groups. If, as Carrier contends, Group 2 employees may be used indiscriminately to perform Group 1 work we perceive no object in the Rules providing for the separate rosters. In view of these provisions requiring that separate seniority of the groups, we believe that before we should hold that the work of the two groups is interchangeable to the extent contended by the Carrier that the rules should be clear and explicit in so providing. Certainly, those provisions of the Agreement relied upon by Carrier do not clearly so provide. At the most, these provisions recognize that certain positions might be made up of both classes of work or that employees might be transferred from Group 2 to Group 1 positions, and thereby acquire seniority in Group 1, but neither of these situations is present here. As we view these facts, the Carrier, in order not to work Group 1 employees on overtime, required the Group 2 employees to suspend work for three hours and fifteen minutes and perform the Group 1 work. We think there was a clear violation of Rule 4-C-1 of the Agreement which is as follows:

"Employees will not be required to suspend work during regular hours to absorb overtime."

Awards 2823, 2859, 3416, 3417, 3418.

In view of the fact that this violation of the Agreement was for the purpose of absorbing overtime, the penalty should be at the overtime rate. Award 3277.

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 violated as alleged.

AWARD

Claim sustained to extent of 3 hours and 15 minutes each Saturday work was performed by Truckers.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

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

DISSENT TO AWARD NO. 3582, DOCKET CL-3538.

We dissent to this award because of its misapplication of Rule 4-C-1 which, by its plain wording, as well as clear purpose, makes it inapplicable to the facts of this case. This conclusion is further supported by the absence of any citation by either of the parties as to its applicability to the facts here involved.

/s/ C. C. Cook
/s/ C. P. Dugan
/s/ R. F. Ray
/s/ R. H. Allison
/s/ A. H. Jones