Award No. 4027
Docket No. CL-3981

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

James M. Douglas, Referee

PARTIES TO DISPUTE:

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

THE PENNSYLVANIA RAILROAD COMPANY

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

(a) M. J. Masquelier and W. C. Stokes, Clerks, Scully Yard Office, Scully, Pennsylvania, be paid eight hours each for February 11 and 12, 1946, at the rate of $193.96 per month, because of the assignment of Clerical work to Brakemen, in violation of the Scope of the Clerks' Rules Agreement.

(b) W. C. Stokes, Clerk, Scully Yard Office, Scully, Pennsylvania, be paid an additional eight hours each day for March 18, 19, 20, 21, and 28, 1946, at the rate of $193.96 per month, because of the assignment of Clerical work to Brakemen in violation of the Scope of the Clerks' Rules Agreement. (Docket C-310.)

EMPLOYES' STATEMENT OF FACTS: This dispute is between the Brotherhood of Railway and Steamship Clerks Freight Handlers, Express and Station Employes and the Pennsylvania Railroad Company (hereinafter referred to as the Brotherhood and the Carrier respectively).

As a result of handling by the National Mediation Board, its Case No. R-268, the Carrier recognized the Brotherhood as the representative of Clerical, Other Office, Station and Storehouse Employes of the Pennsylvania Railroad Company as of October 15, 1936. This Brotherhood has represented this class of employes continuously since that date.

There is in effect a Rules Agreement, effective May 1, 1942, covering Clerical, Other Office, Station and Storehouse Employes 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. This Rules Agreement will be considered as a part of this Statement of Facts. Various rules thereof may be referred to herein from time to time, without quoting in full.

The Claimants, M. J. Masquelier and W. C. Stokes, Clerks, are assigned to the Clerical Extra List at Scully Yard, Scully, Pennsylvania.

A formal agreement, in accordance with the provisions of Rule 5-C-1 of the Rules Agreement, effective May 1, 1942, has not been made to cover an extra list of yard clerks at Scully Yard. However, with the concurrence

applicable Agreement for this feature of the claim and stated that if the claim were allowed it would then be necessary to determine which one of the Claimants was actually entitled to the compensation claimed. The Carrier calls the attention of your Honorable Board to the fact that, in no event, can more than one of the Claimants be entitled to compensation for the dates in February, 1946.

The Carrier therefore submits that the service performed by the Special Duty Men at Scully Yard on the dates in question was not service accruing exclusively to employes coming within the scope of the Agreement governing clerical, other office, station and storehouse employes; that no violation of the applicable agreement occurred; and that the claim is without merit and 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 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 Agreements between the parties to it. To grant the claim of the Employes in this case would require the Board to disregard the Agreements between the parties thereto 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 such action.

CONCLUSION

The Carrier has shown that under the applicable Agreement between the parties to this dispute the assignment of Special Duty Men to make specific checks of its operations as herein described, does not constitute a violation of the Agreement between the parties, because the information or data obtained thereby did not supplant work normally performed by employes coming within the Scope of the Agreement.

It is, therefore, respectfully submitted that the claim is not supported by the applicable Agreement and should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: The General Superintendent assigned two Brakemen to assist him in making a study of the causes of delayed cars in the Scully Yard, and they were put on special duty for that purpose. They checked specific tracks in the yard such as the hold track, shop tracks, and other tracks not used for the normal receiving and dispatching of trains. Then they compared the check with the bills in the yard office, or in the office of the Shop Foreman, and submitted written reports of their findings to the General Superintendent, together with their recommendations for expediting the movement of the cars. Such reports were furnished to the higher operating officers for them to work out a method to correct the delay and to promote greater efficiency.

The track checks made by these Special Duty Men had nothing to do with the routine functioning of Scully Yard, and did not become any part of the usual records of the operations of the yard. Nor did their reports take the place of any work normally performed by the regularly assigned Clerks at such yard. The Clerks made their usual track checks for the

purpose of carrying on the daily operations of the yard, and for the usual and permanent record of such operation.

The question for decision is whether the scope rule was violated in permitting the Special Duty Men to perform such work, as the usual and regular duty of checking tracks is recognized as work belonging to the Clerks.

We do not believe under the particular circumstances of this case there was any violation of the scope rule.

While the Clerks are ordinarily entitled to such work under extraordinary as well as ordinary conditions, still when the purpose of making the track check, its use, the special circumstances which required it, and the fact the General Superintendent was taking it for his particular information, are all considered, we are of the opinion that the Agreement was not violated.

The Clerks performed their usual work without diminution. No work which they regularly, daily performed was taken from them. The work in question became no part of the usual permanent records compiled and kept by the Clerks. The work in question was work of a special nature used for exploring the accuracy of the very work the Clerks themselves were regularly performing.

Since we are of the opinion that such Special Duty Work, under the circumstances of this case and the conditions here existing, is not such customary work regularly performed by Clerks as contemplated by the scope rule, we must deny the claim.

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 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

That Carrier did not violate the agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 30th day of July, 1948.