

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Thomas C. Begley, 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 that: (a) The Management violated the provisions of the Rules Agreement, effective May 1, 1942, by unilaterally removing work accruing to Chauffeurs (Group 2 employees) from under the Scope of that Rules Agreement and assigning such work to employees of another class or craft as of May 11, 1948.

(b) H. E. Martin be allowed an eight-hour day as a penalty for each day subsequent to that date until the work is restored. (Docket N-227)

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 holds 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, 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 is an employee holding a regular position of Chauffeur covered by the Scope of that Rules Agreement having seniority standing in Group 2 on the New York Division of the Carrier.

Effective April 1, 1933, the Carrier established a Motor Pool service on its New York Division. This service was placed under the direction of a Foreman Truck Service, Mr. F. L. Mathews. The division was divided into two zones—the Eastern Zone and the Western Zone. There was a Dispatcher for each zone—for the Eastern Zone it was Mr. K. Worme; for the Western Zone it was Mr. James Mahoney. A copy of a notice issued at that time relative to the new service is attached hereto as Employees' Exhibit "A." Note that no department was to have a truck or trucks consigned to it exclusively. Each of these dispatchers—Worme and Mahoney were clerical employees under the full coverage of the clerical Rules Agreement.

of the applicable Agreement, and it has been shown that no such violation occurred, it is submitted that there is no basis under the applicable Agreement for a payment such as is claimed here. It has not been shown that the Claimant suffered any wage loss by virtue of not having been used to operate the truck or trucks involved herein, indeed it has not been shown that the Claimant was even available to have been used for the performance of the service here in dispute.

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 shown that the work here in dispute does not accrue to Miscellaneous Forces' Chauffeurs coming under the Scope of the Clerical Agreement, and that the Claimant is not entitled to the compensation which he claims.

Therefore, the Carrier respectfully submits that your Honorable Board should dismiss the claim of the Employees in this matter. (Exhibits not reproduced.)

OPINION OF BOARD: The facts are that prior to May 11, 1948, the Maintenance of Way Department placed with the Truck Service on a day-to-day basis an order for a truck for the purpose of transporting Maintenance of Way employees and material to various locations. Effective May 11, 1948, a truck purchased for the Maintenance of Way Department was placed in service in the Maintenance of Way Department and a Maintenance of Way Chauffeur assigned to operate same.

Truck Service employees are under the effective Agreement of May 1, 1942 of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, referred to as Group 2 employees. Maintenance of Way Chauffeurs are under the contract covering Maintenance of Way employees.

A pool of trucks and truck drivers (Chauffeurs) was established by this Carrier in agreement with the Clerks' Organization effective April 1, 1933. This pool supplied trucks to different departments of the Carrier on a day-to-day basis; the pool supplied trucks and drivers to the Maintenance of Way Department. When the pool was established, employees from other departments, including Maintenance of Way employees, with seniority rights under other agreements, came under the Clerks' Agreement, with seniority rights thereunder.

The Carrier states that starting in 1938 the Maintenance of Way Department started to buy trucks for their own use and employ drivers for their own use; that no protest was filed by the Claimant Organization until the May 11, 1948 claim.

The Carrier further states that the Maintenance of Way Department now owns 38 trucks and have their own Chauffeurs to operate these trucks.

The Board is only concerned with the May 11, 1948 claim; the continued practice of using Maintenance of Way trucks and Chauffeurs from 1938 cannot be considered here, except as it relates to this claim. In Award 3576, Referee Shake, speaking for this Board, said: " * * * But repeated violations of an express rule by one party or acquiescence on the part of the other will not affect the interpretation or application of a rule with respect to its future operation."

This work of hauling Maintenance of Way material and men was performed by the pool prior to May 11, 1948. On May 11, 1948 the Carrier removed work from the pool by its unilateral action and gave this work to the Maintenance of Way Department. The Carrier violated the Scope Rule of the Clerks' Agreement. Many awards uphold this finding. (Award 4448.)

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 here; and

That the Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 5th day of July, 1950.