

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Dudley E. Whiting, 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) The Carrier violated the Rules Agreement, effective May 1, 1942, particularly the Scope, Rules 3-A-1 (c), 4-A-1 (i), 5-C-1 and 5-E-1 (e), at the Freight Station, Harrisburg, Pa., Philadelphia Division, by the use of individuals holding no seniority rights to perform Group 1 and Group 2 work on Saturdays.

(b) H. E. Sigler, R. R. Look, L. B. Sipa, J. H. Pearson, J. M. Boland, A. H. Bryan, and all other employees at Harrisburg Freight Station who were deprived of overtime by the use of these individuals be compensated a day's pay at time and one-half for each Saturday during the period November 4, 1950 to January 27, 1951, inclusive, as a penalty. (Docket E-780)

EMPLOYEES' STATEMENT OF FACTS: This dispute is between the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees as the representatives of the class or craft of employees in which the Claimants in this case hold positions 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, as amended, 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 Claimants in this case hold regular position of Tallyman or Freight Trucker at the Freight Station, Harrisburg, Pa., with a tour of duty Monday to Friday, inclusive, Saturdays and Sundays as rest days. However, the Freight Station was operated on Saturdays during the period covered by this claim—November 4, 1950 to January 27, 1951, inclusive—by the use of various unassigned employees. The majority of these employees had full-time employment elsewhere in the vicinity with other employers, such as the

the right to produce competent evidence in its own behalf at a proper trial of this matter, and the establishment of a record of all of the same.

All data contained herein have been presented to the employes involved or to their duly authorized representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: Rule 5-C-1 provides as follows:

"Where extra employes are used extra boards will be established by agreement between the Management and the Division Chairman. The number of extra employes to be used and the manner in which they will work will be determined by written agreement between the Management and the Division Chairman."

This claim arises out of the use of extra employes at the Harrisburg Freight Station. No agreement as required by Rule 5-C-1 was made. The Carrier attempts to defend the use of such extra employes on the basis that the establishment and operation of an extra list there was acquiesced in or agreed to by the Local Chairman. The contract clearly requires written agreement with the Division Chairman, so a verbal agreement with a local chairman does not comply therewith, and prior practice contrary to an unambiguous contract provision does not change the contractual provision.

The Carrier objects to that part of the claim for "all other employes", but the claim was handled in that form on the property without objection, so that contention is invalid here.

The claim will be sustained at pro rata in accordance with our prior awards establishing the appropriate rate for work not performed.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to the 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

The Agreement was violated.

AWARD

Claim sustained at pro rata rate.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois this 29th day of July, 1955.