

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John Day Larkin, 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 Carrier violated the Rules Agreement, effective May 1, 1942, as amended, particularly Paragraph III-2-A of Supplemental Agreement "A", by unilaterally establishing positions of Custodian and Assistant Custodian, Harrisburg, Pa., Philadelphia Division, and appointing individuals to these positions without regard to the various provisions of the Rules Agreement.

(b) Each of these positions and employees be considered as fully covered by all the Rules of the Rules Agreement and that each position now be properly bulletined and awarded as provided in the Rules Agreement. (Docket E-743)

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 held 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, 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.

Sometime in 1945 the Carrier provided modern dormitory facilities for Engine and Train Service employees at three locations in Harrisburg, Pa., on its Philadelphia Division. These were at Enola, Pa. (a suburb), at Reily Street, and at the Hoffman Building. In connection with these operations the Carrier unilaterally established positions of Custodian and Assistant Custodian and unilaterally established rates of pay, and appointed various individuals to these positions in question. We show this in tabular form as the situation existed as of July 1, 1951:

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

(Exhibits not reproduced.)

OPINION OF BOARD: In March, September and October 1945, the Carrier opened new dormitories for certain of its employees at Hoffman House and at Reily Street, Harrisburg, and at Enola, Pa. These dormitories were designed to provide sleeping, recreational, and other accommodations for 169 men at Enola, 58 at Hoffman House and 50 at Reily Street. When opened the Carrier placed one custodian at each of the dormitories, three assistant custodians at Enola and two assistant custodians at each of the other two places. The custodians were paid \$409.15 per month at Enola and \$309.15 at Hoffman House and Reily Street. The assistant custodians were all paid at the same rate, \$309.15 per month. Added to these rates was an additional \$22.02 per month cost-of-living increase.

All except one of the above positions were filled by the Carrier with persons covered by the Clerks' Agreement. But these positions were treated by the Carrier as "excepted" under the provisions of Article III, 2, A of Supplemental Agreement "A" of the parties' Agreement of May 1, 1942. Therefore, the positions were not bulletined.

The instant claim was filed November 15, 1950. Petitioner contends that the positions in question are not in the "excepted" category, since that language applies to "employees and positions which, prior to May 1, 1942, were considered 'excepted' . . ." and these positions were not in existence prior to 1945.

On the contrary, it is claimed that the positions of custodian and assistant custodian in the dormitories, by the nature of their duties, clearly fall within the purview of the Scope Rule of the Master Agreement. Regardless of title, the positions are quite comparable to those classified as Attendants, Building, Rest Room, etc., embraced in Group 2 of the Scope Rule.

We think that when the Carrier found it necessary to establish these dormitories for its employees, it brought those in charge within that portion of the Scope Rule of the Clerks' Agreement which specifies "Other Office, Station and Storehouse Employees . . ." covered in **Group 2** of that rule. The fact that those who were chosen to fill these positions had established seniority in either Group 1 or Group 2 of the Clerks' roster is further evidence that the positions should not have been regarded as "excepted."

The term "custodian" has not been used in the listing of jobs, but the character of the work assigned clearly falls within the category of "Attendants—Building, Commissary, Dining Car Department, Elevator, . . . First Aid, Lamp Room, Post Office, Rest Room, . . . Station, Stock Yard, Supply Car, . . ." etc. Such classifications were acknowledged as duties within the Clerks' Agreements many years ago. See Decision 38 of the United States Railroad Labor Board. We reaffirmed this in Award 3093, where comparable dormitory attendant positions were involved. We do not think that by adding a new title, or even by making some variations in the duties of such attendants, one can escape the fact that such work is properly covered by the Scope Rule. The contention that these positions are excepted is unsupported by the facts in the record.

The claim must be sustained.

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 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 involve herein; and

The Carrier failed to properly apply the provisions of the Agreement.

AWARD

The claim (a and b) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 4th day of November, 1955.