

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, 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, except as amended, particularly the Scope and Rules 4-A-1 (i) and 5-E-1 (e), when on Saturday, May 26, 1951, and all subsequent Saturdays, except June 14 and 21, 1951, the Carrier permitted and required a Gang Foreman not covered by the Clerks' Rules Agreement, to perform work on Saturdays that was formerly performed by a Clerk holding a position fully covered by the Rules Agreement, Hawthorne Car Shop, Indianapolis, Indiana, Southwestern Division.

(b) M. G. Schoen, Claimant, be compensated eight hours pay for Saturday, May 26, 1951, and all subsequent Saturdays, except June 14 and 21, 1951, on account of this violation, as a penalty, until corrected. (Docket W-832)

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.

Mr. M. G. Schoen, the Claimant in this case, is the incumbent of Clerical Position U-2-E in the Car Foreman's Office, Hawthorne Car Shop, Indianapolis, Indiana. Mr. Schoen has a seniority date on the seniority roster for the Southwestern Division in Group 1.

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, 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 established that there has been no violation of the applicable Agreement in the instant case and that the Claimant is not entitled to the compensation which he claims.

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

The Carrier demands strict proof by competent evidence of all facts relied upon by the Claimant, with the right to test the same by cross-examination, 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.

Oral hearing is desired.

All data contained herein have been presented to the employee involved or to his duly authorized representative.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant (J. M. Schoen) occupies Position U-2-E in the Car Foreman's Office, at Hawthorne Car Shop, Indianapolis, Indiana. Prior to September 1, 1949, he was assigned to work six days per week, Monday through Saturday. After September 1, 1949, the position was assigned five days per week, Monday through Friday.

Prior to September 1, 1949, there was included in the position the checking of the Shop tracks and making a list of the cars in the Shop on Form C. T. 362 to aid in switching the shop tracks. After September 1, 1949, Position V-6-C, located at the Hawthorne Storeroom, was used to perform this work on Saturdays. Effective October 14, 1950, Position V-6-C was changed to a Monday through Friday assignment and Claimant did the Saturday work on a call basis. On May 26, 1951, this work was assigned to a Gang Foreman who phoned it to the Yard Office where Form C. T. 362 was made up. It is the contention of the Organization that Carrier violated the Agreement when it permitted a Gang Foreman to perform the above described work on Saturdays.

The evidence shows that Form C. T. 362 was used as a switch list for moving repaired cars from the shop tracks. It is the contention of the Carrier that the Saturday work did not include the checking of the shop tracks but consisted solely of the listing of repaired cars from the repair reports and telephoning them to the yard office. While the method of handling on Saturday was somewhat different, the purpose was identical with the Monday through Friday work. It was work on an unassigned day that was performed by the Claimant on his regular Monday through Friday

assignment. There being no extra or unassigned employe available within the meaning of Rule 4-A-1 (i), current Agreement, the work belonged to Claimant, the regular employe.

The Gang Foreman was not an employe within the Clerks' Agreement. He would have no right to perform work on a clerk's relief day which the clerk performed on his regular assigned days. Awards 3360, 4355, 5117, 7030, 7132.

The record shows that Claimant performed the Saturday work on a three hour call basis before the work was assigned to the Gang Foreman. We think a claim for eight hours pay for each Saturday the Agreement was violated is excessive and not in accord with the facts. The claim will be sustained for a three hour call for the Saturdays for which claim is made.

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 Claim (1) be sustained and Claim (2) be sustained for a call for the Saturdays claimed.

AWARD

Claim (1) sustained. Claim (2) sustained for a call for the Saturdays claimed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 28th day of June, 1956.