

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

Lloyd H. Bailer, 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, except as amended, particularly the Seniority Rules and Rule 4-A-1 (i), when on March 11, 1953, Chauffeur C. J. Bycroft was used to transport material from Schenectady, New York, to Meadows Shop, Jersey City, New Jersey, New York Division, while senior employe Chauffeur J. C. Scott was available.

(b) Chauffeur J. C. Scott, the Claimant, should be allowed eight and one-half hours' pay for March 11, 1953. (Docket N-360)

**EMPLOYEES' STATEMENT OF FACTS:** This dispute is between the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes as the representative of the class or craft of employes 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, except as amended, 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, 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. J. C. Scott, the Claimant in this case, is regularly assigned as chauffeur working under the jurisdiction of the Supervisor of Truck Service, Exchange Place, Jersey City, New Jersey, New York Division. He has a seniority date of November 20, 1942, on the seniority roster of the New York Division in Group 2.

Mr. C. J. Bycroft is also a regularly assigned chauffeur at the same location. His seniority date on the seniority roster of the New York Division in Group 2 is January 3, 1948.

sustaining award in this case. However, if, contrary to the facts, the Employees claim were to be sustained, the Claimant is only entitled to be compensated at the straight time rate of pay. This claim is predicated on the basis that the Claimant was not permitted to perform certain work and not for work actually performed.

Your Honorable Board had held that under the Agreement here involved that time not actually worked does not require payment at the time and one-half rate of pay. This question has been settled undisputably by Award No. 5978 of your Honorable Board involving the same parties. The sole issue in Award No. 5978 was whether the Claimants were entitled to the time and one-half rate of pay. The Board decided that they were only entitled to the pro rata rate on the basis the Claimants did not actually perform work. Consequently, since the Claimant in this case did not actually perform the work on which his claim is predicated, if the claim in this case were payable, which the carrier denies, payment would be at the pro rata rate and not at the overtime rate of pay.

**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 Agreement between the parties thereto. To grant the claim of the Employees in this case would require the Board to disregard the Agreement between the parties 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 the Claimant was not entitled under the Agreement to be used for the work in question; that he was not in any event available for the work; that he is not entitled to the additional compensation which he claims; and that the claim here before your Honorable Board should be denied.

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

(Exhibits not reproduced.)

**OPINION OF BOARD:** At the time in question, Claimant J. C. Scott and employee C. J. Bycroft were regularly assigned as Chauffeurs in the Truck Service Pool at Carrier's Jersey City facility, with tour of duty 8:00 A. M. to 4:30 P. M., Monday through Friday. Scott had greater seniority than Bycroft.

On Tuesday, March 10, 1953, Scott was assigned to make a trip to Wilmington, Delaware, to pick up some needed material. He left during his regular tour of duty and returned at 8:30 P. M. on the same date, four hours beyond his regular quitting time. Meanwhile, at about 4:30 P. M. that day, the Supervisor of Motor Truck Service was given authority to send a truck to Schenectady to pick up a locomotive part at a manufacturer's plant. The Supervisor assigned Chauffeur Bycroft to this trip, gave him the necessary instructions, provided him with expense money, and assisted in checking the

condition of the truck. The Supervisor advised Bycroft he could leave for Schenectady immediately, if he wished, and stop on the road at night for lodging. Bycroft left Carrier's property at 5:00 P. M. with the truck, went home, and departed for Schenectady at 4:00 A. M. the next day. He returned to Jersey City at 9:00 P. M. on the same day. The Carrier states Bycroft was instructed to reach Schenectady not later than noon on March 11 so he would be able to pick up the part before the plant closed at 4:00 P. M.

The Organization contends the Carrier violated the Agreement, particularly Rules 3-A-1 and 4-A-1(i), by assigning a junior employe to perform service involving overtime when Claimant Scott was qualified and available. The Carrier responds it gave Bycroft this assignment in accordance with the practice at this location (assertedly established per local oral agreement) of distributing overtime involving extra work in seniority order but on a rotating basis. In any event, Management contends, the Claimant was not available at the time the Schenectady trip assignment was made. The Organization denies there has been any practice or agreement on distributing overtime by seniority rotation, but states that even if this procedure were applicable, Bycroft would not have been next in line for the assignment.

The evidence fails to establish any violation of the Claimant's contract rights in this instance. He was not available at the time the Schenectady assignment arose and was given to Bycroft on the afternoon of March 10. At that time the Claimant was in Wilmington or on the return trip from that point. Management could not be certain when Scott would reach Jersey City. It was not in a position to know whether he would be willing, or in condition, to accept another overtime assignment after having just completed one. Under these circumstances, there was no violation of any seniority rights to which, otherwise, the Claimant may have been entitled.

**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 the Carrier did not violate the Agreement.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon  
Executive Secretary

Dated at Chicago, Illinois, this 11th day of July, 1957.