Award No. 8021
Docket No. CL-7755

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 Division Committee of the Brotherhood that:

(a) The Carrier violated the Rules Agreement, effective May 1, 1942, except as amended, particularly the Scope and Rule 4-A-1 (i), by assigning work covered by the Clerical Rules Agreement to employes holding no seniority under the Agreement, June 13, 1953.

(b) W. S. Barron, Jr., Store Attendant, Lancaster, Ohio, Panhandle Division, be allowed eight hours pay at the punitive rate, which he would have been paid if worked, as a penalty, for Saturday June 13, 1953. (Docket C-725)

EMPLOYES' 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. W. S. Barron, Jr., is regularly assigned as Store Attendant, Stores Department, Lancaster, Ohio, Panhandle Division, and has a seniority date on the seniority roster of the Panhandle Division in Group 2. Claimant Barron has a first trick assignment Monday through Friday, rest days Saturday and Sunday.

On Saturday, June 13, 1953, it was necessary to call out part of the car repair force at Lancaster to repair cars for grain loading. The car repair force is regularly assigned five days a week Monday through Friday. On

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 claims of the Employes in this case would require the Board to disregard the Agreement between the parties thereto 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 no work was performed at Lancaster, Ohio, on June 13, 1953, that accrued to Store Attendants and the statement of the Employes to the contrary is unfounded and not supported by concrete evidence.

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

The Carrier demands strict proof by competent evidence of all facts relied upon by the Employes, 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 employes involved or to their duly authorized representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant Barron was regularly assigned as Store Attendant at the Carrier's Lancaster, Ohio Stores Department, being regularly assigned on the first trick, Monday through Friday, with rest days Saturday and Sunday. The Stores Department at this location is in an open building that is never locked. Within the building is a locker belonging to Claimant in which personal property and company property are kept. Included in said Company property are such items as hammer handles, oxygen and acetylene tips, batteries, etc. The locker is kept locked, and at the time in question both the Claimant Store Attendant and one Frank Romana, a Blacksmith in the shop force, held keys thereto. Subsequently the Blacksmith's key was turned over to the Claimant.

On Saturday, June 13, 1953, the Carrier called out the car repair force on its rest day to repair cars for grain loading, fifteen of the sixteen-man gang reporting. Claimant Store Attendant was not called. The repair force procured certain material and supplies from the open store room on this day. The Organization contends that Blacksmith Romana also used his key to open the locker and issued tools or supplies stored therein to the other employes. The Carrier denies that any tools or supplies were obtained from the locker on the date in question.

The Organization contends that the issuance of materials in the store room is work within the jurisdiction of the Clerks' Agreement which the Store Attendant is entitled to perform. It is contended that the Store Attendant should have been called out to perform this work pursuant to Rule 4-A-1 (i), dealing with work on unassigned days. Petitioner states it has been the past practice for the Store Attendant to be called out on days when the shop employes work.

The Carrier responds that the issuance of material, etc., is not work accruing exclusively to the Store Attendant either under the Agreement or

per past practice. The Claimant's primary duties, according to the Carrier, are to receive and ship material to and from the warehouse, and to keep track of material in stock by taking a monthly inventory. It is asserted his duties do not include handing out material to the shop forces. Management contends the car repair forces pick up material without the issuance of an order or slip, that they have free access to the material at all times, and that such material is procured without the performance of any work by the Store Attendant even when he is on duty. The Carrier denies it has been the practice to call out the Store Attendant whenever the shop force works.

The Organization's contention that it has been the practice to call out the Store Attendant whenever the shop force works is based upon an April 1945 letter from the Superintendent to the Master Mechanic regarding the Scully Shops, and stating that "if the Storehouse force were male employes, they would, of course, be used as part of the Sunday and holiday force when the Shop Craft employes are used on such days." The Master Mechanic subsequently relayed this letter to other points, including the location where the subject claim arises. The Carrier responds that the Superintendent's letter applied only to the Scully Shops, not Lancaster, and asserts this was a temporary arrangement made during wartime as a matter of good employe relations and in view of the extreme labor shortage. It asserts this never became the practice nor was required by the Agreement.

The Scope Rule of the subject Agreement does not specify the work which is reserved to storehouse personnel. The Organization presents no evidence of probative value that the practice has been for the Store Attendant to issue materials to the shop force. Nor is there any substantive evidence that storehouse personnel have been called out on rest days whenever the shop force has worked at Lancaster. If the Superintendent's letter resulted in the claimed practice at the subject location, it would seem that there would be evidence of same.

In the light of the foregoing, we are of the opinion that the procuring of materials from the open store room by the using forces did not comprise a violation of the Agreement. Awards 5391, 5397, 7081. With respect to the claimed removal of tools or supplies from the locker, the weight of the evidence does not establish that any items were procured therefrom on the day in question. We find, therefore, that the Carrier did not violate the Agreement as charged.

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 25th day of July, 1957.