

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Joseph E. Fleming, 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, by requiring and permitting the Yard Masters on second and third tricks at Transfer Yard, Indianapolis, Indiana, Southwestern Division, to perform duties accruing to clerks and clerical positions covered by the Clerks' Rules Agreement.

(b) Clerks N. B. Shoults and H. H. Stafford should each be allowed eight hours' pay a day, as a penalty, for January 1, 1955, and all subsequent dates until the violation is corrected. (Docket W-1004)

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 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, except 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.

Clerks N. B. Shoults and H. H. Stafford, the Claimants in this case are the incumbents of regular clerical positions at Hawthorne Yard, Indianapolis, Indiana, Southwestern Division. Mr. Shoults' tour of duty is 7:00 A.M. to 3:00 P.M., rest days Sunday and Monday. Mr. Stafford's tour of duty is 7:30 A.M. to 3:30 P.M. rest days Saturday and Sunday. Both Claimants have seniority dates on the seniority roster of the Southwestern Division in Group 1.

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 claim of the Employees 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 established that there has been no violation of the applicable Agreement in the instant case and that the Claimants are not entitled to the compensation which they claim.

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 Claimants, 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 proper record of all of the same.

(Exhibits not Reproduced)

OPINION OF BOARD: The facts in this case are not in dispute. The parties to the dispute have agreed that switch lists are made up by the clerks on Form C. T. 31 that are used by the Yard Conductors to switch trains and cuts. After the cars are switched by yard crews the conductor returns the C. T. 31 list to the Yard Master on duty who copies the different classifications on another C. T. 31 form and then turns these lists over to the clerk on duty.

It is this work by the Yard Master that is the subject of this claim. The Organization claims that this is Clerks work and belongs to them under the Scope Rule.

Carrier contends "It is work which, so far as the record shows has never been performed by Clerks at this location and clearly is not traditionally done by them." It is Carrier's position that the Yard Masters spending a short time in the making of a list on C. T. 31 forms of the numbers and initials of cars on the various tracks in the Transfer Yard cannot properly be construed to constitute the performance of work which accrues exclusively to Clerks. This work was performed by the Yard Masters as incident to their regular and primary duties. By performing this function the Yard Masters had knowledge as to the cars on the various yard tracks under their jurisdiction. Such information is of vital importance to Yard Masters in the fulfillment of the duties and responsibilities incumbent upon them.

The Organization has failed to refute the above set out statement of the Carrier. The work involved herein is work incident to and directly attached to the primary duties of the Yard Master. This case is distinguished from Award 3870 in that in Award 3870 a position was abolished.

The claim should be denied.

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: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois this 30th day of January, 1961.