

**Award No. 10105**

**Docket No. CL-9846**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**Lloyd H. Bailer, Referee**

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**PARTIES TO DISPUTE:**

**BROTHERHOOD OF RAILWAY & STEAMSHIP CLERKS,  
FREIGHT HANDLERS, EXPRESS & 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 Scope, when it removed work accruing to Group 2 Chauffeurs assigned to the Truck Service Pool at Jersey City, N. J., former New York Division, and assigned the work to Frank Pulcini, and/or other Maintenance of Way Department Employees.

(b) The Claimant, Daniel J. Kerr, Sr., should be allowed eight hours' pay a day for April 2, 1951, and all subsequent dates until the violation is corrected, as a penalty. (Docket 76)

**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, 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.

The Claimant in this case, Daniel J. Kerr, Sr., is an employee holding a regular position of Chauffeur covered by the Scope of that Rules Agreement having a seniority date on the Group 2 seniority roster on the former New York Division of the Carrier. The New York Division is now a part of the New York Region.

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.

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

(Exhibits not reproduced.)

**OPINION OF BOARD:** This dispute concerns the Carrier's action in assigning a newly purchased truck to a Maintenance of Way Department employee to be operated in connection with the activity of that department. The claim is that the Carrier removed work from Group 2 chauffeurs assigned to the Truck Service Pool at Jersey City, N. J. and thereby violated the Clerks' Agreement.

The record discloses that new truck in question replaced an outside contractor's truck which had been operated by an employee of the contractor. Thus the action here in dispute did not remove any work from Group 2 chauffeurs covered by the Clerks' Agreement. Work was simply transferred from the contractor to the Maintenance of Way Department.

The basis upon which this claim was presented being lacking in foundation, a denial award is required.

**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 Employee involved in this dispute are respectively Carrier and Employee 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 as charged.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 6th day of October, 1961.