

Award No. 10695

Docket No. CL-10557

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Jerome A. Levinson, 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 Rules 4-C-1 and 4-G-1 (c), when it required Crew Callers to haul company material in their privately owned automobiles from the Storehouse to various Yard Offices in the Erie District, Erie, Pennsylvania, Northern Region.

(b) Claimant J. H. Wurst, a Crew Caller, should be allowed eight hours' pay a day, as a penalty, for January 9, 10, 14, 30 and 31, 1956, and February 5, 9, 11, 12, 14 and 21, 1956. (Docket 174)

EMPLOYEES' STATEMENT OF FACTS: This dispute is between the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees as the representatives 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, 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, J. H. Wurst, was the incumbent of a regular position of Crew Caller at Erie, Pennsylvania, Northern Region, tour of duty 3:00 P. M. to 11:00 P. M., rest days Wednesday and Thursday. He has a seniority roster of the Northern Region in Group 2.

On the dates listed in the claim, January 9, 10, 14, 30 and 31, 1956, and February 5, 9, 11, 12, 14 and 21, 1956, the Claimant was required to

OPINION OF BOARD: This dispute began and ended on the property upon the allegation that Carrier violated Rule 4-G-1 (c) of the Agreement between the parties, "by requiring Crew Callers to haul company material in their private automobiles from the Store House to various Yard Offices in the Erie District." It was not until the dispute was referred to this Board that Petitioner injected the allegation that Carrier required Claimant to suspend work during regular hours to absorb overtime, in violation of Rule 4-C-1. The latter allegation may not be made for the first time before the Board, as this rule is not pertinent to the alleged violation of Rule 4-G-1 (c). Different factual situations are necessary before they become applicable.

Therefore, the Board's consideration of this dispute is confined to the alleged violation of Rule 4-G-1 (c), as follows:

"4-G-1(c). Employees will not be required to provide transportation facilities in order to qualify for positions."

According to the record, Crew Callers at Erie, including Claimant, used their privately owned automobiles voluntarily in the performance of their duties, and they were paid a cash mileage allowance for such use by the Carrier. Furthermore, for years they at the same time delivered certain items of Company materials and supplies, without complaint. Under no circumstances were they required to provide transportation facilities in order to qualify for or hold positions.

It is evident that while Claimant now was willing to use his own automobile in Carrier's service calling crews and performing messenger duties, upon the payment of mileage, he objected to hauling these items of company material and supplies from the Store House to various locations in the Erie district. No rule or agreement has been brought to the Board's attention either requiring or precluding employees from using their own automobiles in Carrier's service. For this reason, the claim will be denied.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees 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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive secretary

Dated at Chicago, Illinois, this 19th day of July 1962.