

Award No. 10762

Docket No. CL-10507

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Eugene Russell, 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) Management violated the Rules Agreement, effective May 1, 1942, except as amended, particularly the Scope and Rule 4-A-6, when it required and permitted a Block Operator and an Engine-house Laborer, at Columbus, Indiana, Southwestern Region, to perform clerical work in connection with the respiting and recalling of the train and engine crews on Trains IS-8 and IS-7, the Madison Local, on September 4, 1956.

(b) The Claimant, Clerk J. M. Davenport, who was both qualified and available should be allowed a three-hour call for September 4, 1956, because of this violation. (Docket 156).

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.

On September 4, 1956, the Claimant, J. M. Davenport, was the regular incumbent of clerical position Symbol B-131-G, at Columbus, Indiana, Southwestern Region, tour of duty 4:00 P.M. to 12 Midnight, Monday through Friday, rest days Saturday and Sunday. He has a seniority date on the seniority roster of the Southwestern Region in Group 1.

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, which constitutes the applicable Agreement between the parties, 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 to it. To grant the claim 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 the Agreement. The Board has no jurisdiction or authority to take any such action.

CONCLUSION

The Carrier has shown that the work here in dispute does not accrue exclusively to Group 1 employes coming under the scope of the Clerical Agreement, and that the Claimant is not entitled to the compensation which he claims.

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

(Exhibits not reproduced.)

OPINION OF BOARD: The joint statement of the agreed upon facts in this case are as follows:

"There are two clerical positions at Columbus, Indiana, one with tour of duty 8:00 A. M. to 4:00 P. M., and the other, 4:00 P. M., to 12:00 midnight, both positions have rest days of Saturday and Sunday.

On Tuesday, September 4, 1956, the claimant, J. M. Davenport, was regularly assigned to the first trick clerical position, with tour of duty 4:00 P. M. to 12 midnight, rest days Saturday and Sunday.

The crew on local freight train IS-8-7 has an assigned reporting time of 2:15 A. M. for the engine crew and 2:30 A. M. for the train crew. On September 4, 1956, it was necessary to respite both the engine and train crew assigned to local train IS-8-7 from 2:15 A. M. to 6:20 A. M.

The powerman contracted the block operator and engine attendant at 3:50 A. M. at Columbus, Indiana, and instructed them to contact the train and engine crew and advise them of the respite. The block operator and engine attendant relayed the powerman's instructions to the crew."

It is the position of the organization that the Claimant, J. M. Davenport, is regularly assigned to the second trick Clerical position at Columbus, Indiana, Tour of Duty 4:00 P. M. to 12 midnight. Mr. Davenport resides at Jeffersonville, Indiana, a distance of approximately sixty-six miles south of Columbus. He is required to remain at Columbus from 12 midnight until 4:40 A. M. in order to ride train No. 94 to Jeffersonville. He spends this time resting in the Yard Office, which is located in the station building, and is always available for any overtime work or emergencies that may be required or occur between midnight and 4:40 A. M.

On the date of this claim he was in the Yard Office from midnight to 4:40 A. M. as usual. This fact was known to the Movement Director, at Indianapolis, the Block Operator, at Columbus and the Engine Attendant at Columbus.

The reporting time of the crew for the Madison Local, trains IS-8-7 is 2:15 and 2:30 A. M. On September 4, 1956, there was no engine available for I.S.-8-7 and it was necessary to respite the train and engine crews. Movement Director Murphy instructed the Block Operator and Engine Attendant at Columbus to notify the crews that they were respited until 6:20 A. M., and his instructions were complied with. It is the position of the organization that the work of notifying train crews in instances like this is work that accrues to the Clerical—Crew Dispatchers or Crew Callers. There are no Crew Callers located at Columbus, but the duties of the Claimant's position includes Crew Dispatching, and he does perform these duties whenever required to do so during his regular Tour of Duty therefore, inasmuch as he was available on the property of the Carrier, he should have been used to perform, on an overtime basis, the identical work that he would have been required to perform if the same circumstances had arisen during his regular Tour of Duty. There are but two clerical positions at Columbus, one working from 8:00 A. M. to 4:00 P. M. and the Claimant from 4:00 P. M. to 12 midnight. The Block Operator and Engine Attendant who notified the Crews of the respite are not covered by the Clerks' Rules Agreement.

It is the position of the Carrier that respiting of train crews is not work accruing solely to clerical employees, and that it is a customary practice for proper officers of the Company to inform Crews of respites and setbacks through other employees, when necessary, especially at points where clerks are not employed on all tricks. (See Record Pages 17 and 18)

The Board has carefully reviewed and considered the prior Awards cited by both parties in this case, with special emphasis on those Awards involving this same Carrier, the same Organization and the same Agreement, including the same Scope and other Rules.

From this study and review, the Board finds that the most recent Award directly in point on this issue, is Award Number 10445 by Referee Robert J. Wilson issued March 28, 1962, wherein the Board found no violation of the Agreement and denied the claim.

The pertinent part of the Scope Rule of the Agreement as it applies to this case is as follows:

"These Rules shall constitute an Agreement between the Pennsylvania Railroad Company and its employees of the classifications herein set forth as represented by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, and shall govern the hours of service, working conditions, and rates of pay of the following positions and employees of The Pennsylvania

Railroad Company, subject to such modifications and exceptions as are set forth in Supplemental Agreement 'A':

Group 1—Clerks as defined in the following paragraph:

Clerk—an employe who regularly devotes not less than four hours per day to the writing and calculating incident to keeping records and accounts, writing and transcribing letters, bills, reports, statements, and similar work, and to the operation of office mechanical equipment and devices, except as provided in Rule 3-C-2. This definition also includes stockmen, shippers and receivers, tallymen, blue printers, baggage checkmen, parcel room attendants or checkers, routemen, receiving and delivery men, foremen and assistant foremen—station or storehouse, excluding shop labor foremen, gang foremen and gang leaders at Altoona Works who supervise shop laborers and storehouse laborers."

To sustain the position of the Claimant and the Organization in this case it would be necessary to prove that the Scope Rule specifically grants to the Clerks the exclusive right to respite train crews or that through custom and practice such work has been traditionally reserved to them. The Scope Rule in this case does not specifically grant to the Clerks the exclusive right to respite train crews and this Board has held in numerous prior Awards that where the Scope Rule is general in nature and does not specifically enumerate the functions, the right to the work must be derived through tradition, historical practice and custom, and on this issue the burden of proof rests with the Employees. The Claimant in this case has failed to prove that by practice, custom and tradition the work in question has been reserved to the Clerks.

Our careful study of this record clearly shows that the respiting of train crews has been performed by various employes other than Clerks and has not been exclusively assigned to and performed by the Clerical Employees.

It is the conclusion of the Board that under the facts and circumstances established by the record in this case, the claim must 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 contract 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 7th day of August 1962.