

Award No. 10894

Docket No. CL-10509

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) The Carrier violated the Rules Agreement, effective May 1, 1942, except as amended, particularly the Scope Rule 3-C-2, when it abolished the third trick position of Store Attendant at Erie Storehouse, Erie, Pennsylvania, former Northern Division, effective October 30, 1954, and failed to assign all of the remaining work of the abolished position to the positions covered by the Clerks' Rules Agreement which remained in existence at the location.

(b) The Claimant and incumbent of the abolished position, M. C. Sutter, should be allowed eight hours pay a day, as a penalty, commencing October 30, 1954, and continuing until the position was re-established effective October 10, 1955.

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.

Prior to October 30, 1954, the Claimant, M. C. Sutter, was the regular incumbent of a third trick position of Store Attendant at Erie Storehouse,

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

(Exhibits not reproduced.)

OPINION OF BOARD: This claim is by the Brotherhood of Railway and Steamship Clerks against the Pennsylvania Railroad Company for the alleged violation by the Carrier of the Rules Agreement effective May 1, 1942, except as amended, particularly the Scope Rule and Rule 3-C-2.

The record discloses that before October 30, 1954 the Claimant, M. C. Sutter, was the regular incumbent of the third trick position of Store Attendant at Erie Storehouse, Erie, Pennsylvania, tour of duty 11:00 P. M. to 7:00 A. M., rest days Friday and Saturday. The Claimant has a seniority date on the seniority roster of the Northern Region in Group 2.

Immediately prior to October 30, 1954, the force at Erie Storehouse consisted of the following positions:

TITLE	TOUR OF DUTY	REST DAYS	KIND OF POSITION
1 Stockman	7 A. M. to 3:30 P. M.	Sat. & Sun.	5 Day
1 Clerk	" "	" "	"
1 Shipper & Receiver	" "	" "	"
2 Store Attendants	" "	" "	"
1 Store Attendant	7 A. M. to 3 P. M.	Mon. & Tues.	7 Day
1 " "	3 P. M. to 11 P. M.	Sat. & Sun.	"
1 " "	11 P. M. to 7 A. M.	Fri. & Sat.	"
1 " " (Relief)	Various	Wed. & Thurs.	5 Day
2 Chauffeurs	7 A. M. to 3 P. M.	Sat. & Sun.	"
2 Stores Laborers	" "	" "	"

The 11:00 P. M. to 7:00 A. M. position of Store Attendant held by the Claimant was abolished effective October 30, 1954. The primary duties of this position consisted of the following work:

"Filling MP 151 orders at counter, completing and filing MP 151, stowing material in proper place, making material inventory and keep material in clean and neat condition."

All of the positions listed above continued in existence after the 11:00 P. M. to 7:00 A. M. position of Store Attendant was abolished effective October 30, 1954.

A claim was instituted by the Claimant on November 26, 1954, under the provisions of Rule 7-B-1, substantially the same as outlined in the Statement of Claim shown above. The claim was progressed to the Manager-Labor Relations of the Carrier by means of a Joint Submission. (See Employees Exhibit (a), pages 16 and 17 of the record.) and denied in his letter dated October 25, 1957.

The Carrier Members of this Division contended that a Third Party was involved in this dispute, and notice was given. Under date of June 15, 1961 Messrs. Michael Fox, President, Railway Employees Department

(A.F.L.-C.I.O.) and W. J. Staudenmaier, President, System Federation No. 152 made a joint reply to the Executive Secretary, Third Division advising that neither the Railway Employees Department, A.F.L.-C.I.O., nor System Federation No. 152, nor the Employees they represent are involved in such a dispute between a Carrier and the representative of another craft concerning the interpretation of its Agreement between the Carrier and the representative of such other craft.

The propriety of the handling of this dispute on the property has not been questioned and consequently is not an issue here.

Your Board finds from the preponderance of the evidence in this case that with the abolishment of the Store Attendant's position, all of the above listed duties of this position which remained to be performed were assigned to other positions covered by the Clerks' Agreement working on the first and second trick. The function of filling M.P. 151 orders at the counter, which the third tour Store Attendant formerly had performed, ceased to exist and was no longer performed by anyone on this tour. After the position in question had been abolished, material required for repairs to diesel locomotives during the hours 11:00 P. M. to 7:00 A. M. usually was procured by the enginehouse personnel from a working stock section set up in the enginehouse in the Crew Dispatcher's office, and stocked by storehouse Employees who worked on the first and second tours. This stocked section consisted of common items required to make light repairs to diesel locomotives dispatched during the third tour.

The only issue is whether the procural of materials from the store room by the Gang Foreman under the specific circumstances of this case is work within the Agreement. We have carefully considered the record in this case and the awards cited by Petitioner and find that the facts in this case are clearly distinguishable from those contained in the cited awards. We find that all of the duties performed by Claimant, M. C. Sutter, prior to October 30 were assigned to the clerks remaining on the first and second tricks except the duty of dispensing repair parts which was abolished. We further find that the store house was locked on the third tour of duty and the key kept in possession of the Gang Foreman on duty. When on rare occasions some uncommon item not kept in the working stock section would be needed to repair a diesel locomotive for dispatchment on the third tour the Gang Foreman would secure the item of material from the store house and that according to this record such procurement occurred only on seven instances on the third tour, during the period October 30, 1954 to June 27, 1955 or approximately one procurement per month. We do not find any prohibition against such procurement of repair parts or that such procurement belongs exclusively to the clerks work.

In view of the foregoing findings from this record we consider it unnecessary in this opinion to enter into a discussion of the various awards cited by the parties since no assignment of duties was made by the Carrier in violation of the Scope Rule or Rule 3-C-2 as alleged.

In our opinion the occasional procural of an item of material from the store house by the Gang Foreman as established by this record and under the specific circumstances of this case is not work in violation of the Agreement and does not constitute "Filling MP 151 orders at counter", therefore, this claim cannot be sustained.

This award is limited to the particular facts of this case.

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 November 1962.