

Award No. 11766

Docket No. CL-11694

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Nathan Engelstein, 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 and Rules 2-A-1 and 5-E-1, in requiring conductors on freight trains operating from Enoia, Pa., or Harrisburg, Pa., Philadelphia Region, to Altoona, Pa., Pittsburgh Region, to prepare CT-362 reports of cars in their trains, in triplicate.

(b) J. A. McCartney should be allowed twenty-four hours' pay a day for January 17, 1957, and all subsequent dates until the violations are corrected.

(c) V. L. Lykens, C. M. Kelley, W. E. George, and R. W. Overcash, should be allowed eight hours' pay a day beginning January 22, February 22, February 11, and March 2, 1957, respectively, and continuing until the violations are corrected.

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.

The Railway Labor Act, in Section 3, First, subsection (1), 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 hereto. To grant the claim of the Employees 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 this dispute. The Board has no jurisdiction or authority to take any 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 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 proper record of all of the same.

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

(Exhibits not reproduced.)

OPINION OF BOARD: Before and after May 1, 1942, the effective date of the Agreement of the parties, the conductor on the road train from Enola or Harrisburg to Altoona, Pennsylvania prepared CT 362 report in triplicate. Upon his arrival at Altoona he would submit the three copies of the report to the Yard Office, whereupon a clerk on duty would make a physical track check to ascertain the accuracy of the CT 362 data. On July 2, 1957, Carrier instructed clerks in the Yard Office at Altoona not to take the CT 362 report form with them when making the track check. This order precipitated the basic dispute.

Claim is made by Brotherhood on behalf of certain employees that Carrier violated the Rules Agreement, particularly the Scope Rule, in requiring conductors on freight trains on this run to prepare CT 362 form. Request is made that petitioner J. A. McCartney be allowed 24 hours pay a day for days of violation claimed and that petitioners V. L. Lykens, C. M. Kelley, W. E. George, and R. W. Overcash also be allowed eight hours pay a day for time in question. Their claim is based upon the premise that the preparation of form CT 362 by freight conductors is a violation of the Scope Rule. They contend that the filling out of Form CT 362 is work which should properly be assigned to clerks under the terms of the agreement. They also claim that the rate agreements, advertising bulletins, and time study questionnaires designate this type of work as clerical. Carrier's denial of the claim is predicated on the argument that until this claim was filed no question was raised by Organization, although clerks on this run did not prepare the form, and that the Scope Rule does not exclusively reserve this work to clerks.

We consider significant the practice, in relation to this work, which was prevalent on the western run (Enola to Altoona). Before the adoption of the Agreement of 1942, conductors recorded the initial and number of cars carried on their train on Form CT 362. This practice continued after the effective date of the Agreement. The Agreement is not explicit on the allocation of this duty, and the record shows that clerks never actually assumed this duty on this run. The fact that eastern runs use clerks to fill out Form CT 362 and the contention that various rate agreements, advertising bulletins, and time study questionnaires designate this task as clerical work, are not pertinent to the issue. This argument is based on the premise that under the agreement this duty exclusively belongs to clerks and that by the very nature of the work it accrues to them. It also presumes that practice confirms these duties as exclusively clerical. We have already pointed out that the Scope Rule does not restrict this work to clerks. The fact that in some instances, as in the case of eastern runs, clerks perform this work does not prove they have the exclusive right to do it at all times. Moreover, it is a fact that it was an established practice not to use clerks for reporting on Form CT 362 on the western run. The Organization's argument that practice sustains its claim cannot, in other words, be accepted for the Enola to Altoona run even though there may be a basis for this argument for the eastern run or other areas.

In this case the parties were aware that conductors followed the practice of filling out Form CT 362, yet they made an Agreement in 1942 without specifically transferring that duty to clerks on the western run, and they continued to acquiesce in that practice on the western run after the adoption of the Agreement. Under these set of facts, we do not recognize a violation of the Agreement as claimed; therefore, petitioners have not established a clear and convincing claim for compensation.

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 9th day of October, 1963.