Award No. 12137
Docket No. CL-11974

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Joseph S. Kane, 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 and Rule 4-A-1 (i), when it used Maintenance of Equipment employes, not covered by the Clerical Rules Agreement, to unload wheels from car PRR 491852, at Renovo Shop, Renovo, Pennsylvania, Northern Region, on January 19 and 20, 1957.

(b) Claimant R. I. Bodley, should be allowed a three hour call each day, at the Crane Operator rate of pay, for Saturday and Sunday, January 19 and 20, 1957.

Claimant H. D. Peck, should be allowed a four hour call each day, at the Stores Laborer rate of pay, for Saturday and Sunday, January 19 and 20, 1957. (Docket 508)

EMPLOYES' STATEMENT OF FACTS: This dispute is between the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes as the representative of the class or craft of employes in which the Claimants in this case held 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 Employes 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.

lied upon by the Claimants, 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.

(Exhibits not reproduced).

OPINION OF BOARD: On January 19, 20, 1957, Saturday and Sunday respectively carmen in the Maintenance of Equipment Department performed the work of unloading a pair of wheels from a freight car in order to put them on another car awaiting repairs. A freight car was fully loaded with wheels and had been spotted on No. 10 track prior to being unloaded and the wheels placed on the wheel storage track at Renovo Shops. The two days claimed were unassigned days of Group 2 employes covered by the Scope Rule of the Clerks' Agreement.

However, on the dates of the claim one Claimant was the incumbent of a position of Stores Department Truck Driver, or Chauffeur and a qualified Crane Operator, while the other Claimant was a furloughed Stores Laborer. On the days in question two M. of E. Department Carmen not covered by the Clerks' Agreement unloaded on each day a pair of wheels from this car. This work was normally performed by Group 2 clerical employes. Subsequently, Group 2 employes unloaded and placed the remaining pair of wheels in this car on the wheel storage track upon their return to work on Monday.

It was the contention of the Claimants that the Scope Rule and Rule 4-A-1 (i) was violated when the Carrier used two carmen to unload wheels on January 19 and 20, 1957 because the carmen were not covered by the Clerks' Agreement. That Group 2 employes do the work Monday to Friday inclusive and the carmen performed the work on the unassigned rest days of the Group 2 employes. Also, the established practice on the property has been for the Group 2 employes to do this work.

The Carrier contended that the Agreement did not govern this dispute, no Agreement had been violated. That the carmen could perform such work, as it amounted to nothing more than the routine procurement of material by carmen from the storehouse stock pile; that such work is not a Stores Department function. Furthermore, Carrier has the right to arrange its operations and assign work in keeping with the efficiency and economy of its operation.

The issue presented is whether the carmen have the right to remove the wheels from the Car on No. 10 track, rather than from the car on the storage track, prior to the placement of the wheels on a car they are repairing.

An examination of the facts reveals that the ordinary work routine is for the Group 2 men to unload the car and place the wheels on the storage track where the carmen remove them as needed for work assignments. In this dispute the wheels had not been unloaded and placed on the storage track by Group 2 men but had been taken directly from the spotted No. 10 car by the carmen.

Rule 4-A-1 (i) states:

> "Where work is required by the Management to be performed on a day which is not a part of any assignment, it may be performed by an available extra or unassigned employe who will otherwise not have 40 hours of work that week; in all other cases by the regular employe."

The record does not contend that any extra employes were assigned in

the Stores Department at Renovo; then according to the Rule cited above the regular assigned men should be given the work.

The Scope Rule does not describe the work reserved to the class of employes covered by it. Thus it is incumbent upon the Claimant to establish that the work so claimed has traditionally and customarily been performed on the property by employes of the class or craft to which he belongs. Under the circumstances here the Claimants had performed the work from Monday to Friday inclusive for some time and it must be presumed that they did so under the provisions of the Scope Rule. There has been no contention advanced that Group 2 employes did not customarily unload the car from where it was spotted to the wheel storage track with a crane operator and one or two laborers who would hook on or detach the load. It was further shown that on the following Monday Group 2 men completed the unloading of the wheels from track No. 10 to the storage track.

The record does not reveal that other employes, nor the carmen, did this work on other occasions, nor that the Carrier was merging the work among classes of employes who had also performed the work previously, as in Award 10645. In Award No. 8312 which was offered we distinguish from the facts herein by the following language on page five.

> ". . . Material of different kinds is kept in different locations in the general store area and the Issueman has always issued material on Sunday from whatever place in the area it may be located . . ."

The record here does not allege that the carmen performed this task in the past or had performed it on other occasions.

We are further of the opinion that if the Scope Rule and Rule 4-A-1 (i) of the Clerks Agreement protected the positions five days per week and on the sixth and seventh days no significant circumstances existed other than convenience it appears that the assignment under the rules cited belonged to the Claimants.

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 Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act, as approved on June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Scope Rule and Rule 4-A-1 (i) was violated.

AWARD

Claim sustained. Compensation should be awarded pursuant to the Agreement.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 24th day of January, 1964.