

Award No. 12177

Docket No. CL-11873

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**(Supplemental)**

Michael J. Stack, Jr., Referee

**PARTIES TO DISPUTE:**

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,  
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES**

**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, when it required Yard Masters at the Hump, Ebenezer, New York, Northern Region, who are not covered by the Clerks' Rules Agreement, to perform clerical work which is normally and properly performed by clerical employees.

(b) The Claimant, Clerk L. R. Bryant, should be allowed eight hours pay a day, as a penalty, for August 15, 1956, and twenty-five other dates specified in the original claim. [Docket 481]

**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 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, 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 Claimant, L. R. Bryant, is the incumbent of a regular clerical position at Ebenezer Hump, New York, Northern Region. He has a seniority date on the seniority roster of the Northern Region in Group 1.

said dispute in accordance with the Agreements between the parties thereto. To grant the claim of the Employees in this case would require the Board to disregard the Agreements 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 such action.

### CONCLUSION

The Carrier has shown that the work involved in this dispute, as performed by the Yard Masters at Ebenezer, N.Y., was not work reserved exclusively to clerical employees by the Clerks' Rules Agreement or otherwise, and that its performance by the Yard Masters was not in any way violative of said Agreement.

Therefore, the Carrier respectfully requests your Honorable Board to deny the Employees' claim in this matter.

The Carrier demands strict proof by competent evidence of all facts relied upon by the Employees, 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 record of all of the same.

(Exhibits not reproduced.)

**OPINION OF BOARD:** Does the fact that the bulletin of a clerk position includes a reference to a specific type of work confer that work on the employees of the clerk craft to the exclusion of all other crafts such as to establish a breach of the agreement on a showing that employees of another craft are also performing that particular work?

We hold no.

At the Hump Yard Office, Ebenezer, New York, the preparation of a list known as CT-392 cut list and the preparation of a list for classifying trains known as CT-362 was advertised as part of the duties of the Freight Clerk. Formerly this work had been part of the duties of a clerk position, now abolished, known as "outside checker" or "mud clerk." This latter list formed the basis for the preparation of a list by the Yard Master known as CT-392, the same list advertised as part of the duties of the Freight Clerk.

The Claimant contends that since the primary duties of the Freight Clerk include the preparation of CT-392, it is a violation of the Scope Rule for employees of crafts other than clerks to do this work.

With this position we cannot agree.

Claimant bottoms his position on the Scope Rule, which reads as follows:

"Scope. 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 support his position, Claimant must point to specific language of the rule reserving the work exclusively to his craft or in the absence of the same an established custom and practice in support of the same conclusion.

In fact, this particular work at this location has for a long time been performed by the Yard Master and by the Freight Clerks when time permitted. In support of this, the Carrier has submitted affidavits of two employes at this location, testifying as to the accuracy of these facts.

On this basis of the record the position of the Claimant must fail.

**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 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 7th day of February 1964.