

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Kieran P. O'Gallagher, 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 3-B-1 and 3-D-1, when it assigned Group 2 messenger and janitor work at the Louisville Freight Station, Louisville, Kentucky, Southwestern Region, to Group 1 clerical employees and to Yard Conductors and Trainmen, M. of E. Department Car Shop Employees and others not covered by the Clerks' Rules Agreement.

(b) The Claimant, C. C. Stroxtile, should be allowed eight hours pay a day, as a penalty, commencing April 15, 1957, and continuing until the violation is corrected. [Docket 406]

EMPLOYES' 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, 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 in this case, C. C. Stroxtile, is the incumbent of a regular Group 2 position of Trucker at the Freight Station, Louisville, Ky., South-

“ . . . Such suit in the District Court of the United States shall proceed in all respects as other civil suits, except that on the trial of such suit the findings and order of the Adjustment Board shall be prima facie evidence of the facts therein stated.”

This provision contemplates that such suit “shall proceed in all respects as other civil suits” with the exception that the findings of the Adjustment Board as to the stated facts will be accepted as prima facie evidence thereof. It is clear this provision contemplates the application of the same rule of damages and the same rule against penalties in enforcing contracts as are applied in civil suits generally. An award contrary to these principles would be unenforceable as a matter of law.

For the foregoing reasons, it is respectfully submitted that your Honorable Board may not properly enter such an award in this case.

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 Agreements 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 interpretations 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 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 performance of messenger work here involved was in no way violative of any provisions of the Clerks’ Rules Agreement, and that the Employees have produced no valid evidence to the contrary.

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: This claim is based upon an averment by the Claimant that the current agreement was violated when the Carrier assigned certain work at Louisville Freight Station and Jeffersonville, Indiana, formerly

performed by a Group 2 employe, to Group 1 clerical employes and other employes not covered by the agreement.

In order for the Claimant to prevail he must show that the Scope Rule of the agreement confers upon a Group 2 employe the exclusive right to perform the work described. We find, from the record, the Claimant has failed to prove the allegation upon which his claim is based for the reason that the Scope Rule relied upon is general in character, and following the doctrine laid down in numerous awards of the Division, we must conclude that the Scope Rule herein cited was not violated when Class 1 clerical employes and other employes not covered by the agreement performed the service complained of.

Absent a violation of the Scope Rule, it follows there is no violation of Rules 3-B-1 or 3-D-1.

The Board finds the claim lacks the merit to warrant a sustaining award, and must therefore 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 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 20th day of February 1964.