

Award No. 12340

Docket No. CL-11879

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 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 Rule 4-A-6, by requiring Block Operators, at Columbus, Indiana, Southwestern Region, to handle baggage and mail on and off Passenger Train No. 94, daily, seven days a week.

(b) The Claimant, W. F. Abel, a regular Group 2 Baggage and Mail Handler at Columbus, should be allowed eight hours pay a day, as a penalty, commencing November 20, 1957, and continuing until the violation is corrected.

[Docket 467]

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.

On November 20, 1957, the Claimant in this case, W. F. Abel, was the incumbent of a regular position of Warehouseman (Group 2) at the Freight Station, Columbus, Indiana, tour of duty 8:00 A. M. to 12 Noon, and 1:00 P. M. to 5:00 P. M., rest days Saturday and Sunday.

This provision contemplates that such suits "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 that 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. It is respectfully submitted that your Honorable Board may not properly enter such an award.

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 Agreement, which constitutes the applicable Agreement between the parties 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 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 Claimant is not entitled to the compensation which he claims.

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: Does the assigning of the work of handling baggage and mail to and from passenger trains to four classifications of employees covered by the Clerks' Agreement place that work within the scope of the agreement and ipso facto constitute a recognition by Carrier that such work accrues exclusively to clerical employees of the four classifications?

We hold it does not.

At Columbus, Indiana the third trick block operator who is covered by the Telegraphers' Agreement has handled baggage and mail on and off a daily train for a period in excess of thirty-two years prior to this dispute. This period antedates the Clerks' Agreement by seventeen years. No clerical employees have ever been assigned to handle baggage and mail on third trick at this station.

Claimant a day shift clerk at the same location filed this claim for a penalty contending that this Carrier's practice violated the Scope Rule and Rule 4-A-6.

With this position we cannot agree.

The Scope Rule insofar as is here pertinent provides:

"These Rules shall constitute an Agreement between the Pennsylvania Railroad Company and its employes of the classifications herein set forth as represented by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes, and shall govern the hours of service, working conditions, and rates of pay of the following positions and employes of The Pennsylvania Railroad Company, subject to such modifications and exceptions as are set forth in Supplemental Agreement A:

Group 2— Other Office, Station and Storehouse Employes of the following Classifications:

* * * * *

Mail Handlers

* * * * *

Station Baggage-men

* * * * *

Truckers — Freight or Baggage

* * * * *

Warehousemen"

Being general in nature the obligation then devolves on the Claimant to establish by custom and practice that this work has exclusively been performed by employes of his craft before his position can be sustained.

The record indicates that aside from the practice at this location there are a number of non clerical positions on this property which also customarily perform this work.

Claimant has not met his burden of establishing exclusivity of this work and this basis as support for the claim we conclude is wanting.

Nor do we believe Rule 4-A-6 supports Claimant's position. We have read the five sub positions thereof and, without setting them forth at length we do not find they lend themselves to an interpretation favorable to Claimant.

With regard to the statement of the Claimant included in the Organization's Submission relative to the work he did during the third trick and without deciding the question raised by Carrier that it constitutes a claim not instituted on the property it does not affect the conclusion we have reached. Assuming arguendo that it is properly a part of the record Carrier's denial

of its reliability when considered in relationship to our rules relative to burden of proof prevents such statement from affecting the conclusion already reached.

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 20th day of March 1964.