

Award No. 12556

Docket No. CL-12323

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Lee R. West, 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 (GL-4859) that:

(a) The Carrier violated the Rules Agreement, effective May 1, 1942, except as amended, particularly the Scope Rule, when it removed the work of loading and unloading car wheels into and out of freight cars at the Car Shop, Conway, Pennsylvania, Pittsburgh Region, from Group 2 Store Department employees, and assigned it to Maintenance of Equipment employees not covered by the Clerical Rules Agreement.

(b) Claimants Raymond Burk and C. F. Kinslow should be allowed eight hours' pay a day, as a penalty, for June 1 and 4, 1956, and all subsequent dates until the violation is corrected.

(c) Claimants R. E. Goodwald, J. P. Shields and S. J. Macsurak should be allowed eight hours' pay, as a penalty, for August 25, 1956.

[Docket 551]

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 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 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 question of "penalty" payments for alleged loss of work has been considered at length in Award 7287 (Referee Rader) involving these parties. In that case, a claim by clerks arising out of the abolishment of a yard clerk's position in Wise Avenue Yard, was sustained. The award was subject to a series of three interpretations in which the issue of monetary loss as opposed to penalty payments was fully discussed. The result of these interpretations was that monetary loss was held to be the proper measure of compensation.

It is submitted, therefore, that the Claimants are not entitled to the penal compensation which they claim in paragraphs (b) and (c) of the Employees' Statement of Claim.

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 to it. To grant the claim 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 the Agreement. 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.

(Exhibits not reproduced.)

OPINION OF BOARD: This claim arose when the Carrier, on June 1, 1956 removed the work of unloading car wheels at Conway, Pennsylvania from Group 2 Store Department employees and assigned it to Maintenance of Equipment employees.

The Brotherhood contends that this work was properly assigned to the Group 2 employees; that the work belongs to them by virtue of the Scope Rule and the practice throughout the system and that it may not be taken from them and assigned to another craft unilaterally.

The Carrier, on the other hand, points out that the Maintenance of Equipment employees had unloaded car wheels at the Conway Shop for 40 years before the Group 2 employees were assigned to this work; that the Group

2 employes only performed this work for approximately 8½ or 9 months before the work was returned to the Maintenance of Equipment employes and that there is no system wide practice (as contended by the employes) whereby Group 2 employes exclusively perform the type of work involved herein.

The Scope Rule involved is general in nature and does not expressly provide that this work belongs to the Group 2 clerks. Further, there are conflicting claims and assertions in the record with regard to the custom and practice throughout the system. The Brotherhood has failed to prove that the custom and practice throughout the system is extensive enough to give Group 2 employes the demand right to the type of work involved herein. For this reason the claim must 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 has not been violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of May 1964.