

Award No. 12787
Docket No. CL-12408

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

George S. Ives, 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, when it assigned the work in connection with hurrying and securing, which had formerly been included in the assigned duties of Store Attendant position Symbol B-24, until this position was abolished, to Morris Albom, M. of E. Department Tool Room Attendant at the Heavy Repair Shops, Wilmington, Delaware, Chesapeake Region.

(b) The Claimant, F. C. Green, Store Attendant, whose position is fully covered by all the rules of the Clerical Rules Agreement, should be allowed eight hours pay a day, as a penalty, for March 6, 1959, and all subsequent dates until the violation is corrected.

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 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 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.

The Claimant in this case, Mr. F. C. Green, is the incumbent of a regular position of Store Attendant at the Heavy Repair Shops, Wilmington, Delaware, Chesapeake Region. He has seniority dates on the seniority rosters of the Chesapeake Region in Group 1 and also in Group 2.

OPINION OF BOARD: The instant dispute arose out of the abolishment of a covered position effective June 5, 1952 under the Rules Agreement between the parties. Claimant, presently the incumbent of a regular position of Store Attendant with Groups 1 and 2 seniority in Carrier's Chesapeake Region, formerly held the abolished position of Store Attendant Symbol B-24, at this location from September 25, 1950 until June 5, 1952.

The bulletin announcing the establishment of the former position did not set forth any specific duties but merely provided as follows:

"Distribution of material under the jurisdiction of the Storekeeper. Must have a fair knowledge of the operating procedure of the stores department, and as to the use of material."

Petitioner submitted in evidence Claimant's statement which outlines the primary duties involved in performing the work of hurrying and securing materials and supplies needed by the shop forces, including the acquisition of emergency materials from various sources. The claim is predicated upon the alleged assignment of this work previously performed by the Claimant while he was the incumbent of the abolished position B-24 by the Carrier to an employee not covered by the Scope Rule of the Rules Agreement. The position to which the duties of the abolished position were allegedly transferred are those of an M. of E. Department material chaser. Carrier contends that the material chaser performs no work at all of either handling or distributing material and that a comparison of the duties performed by both positions supports this contention.

Petitioner alleges that the work of hurrying and securing materials was assigned to Store Attendant position Symbol B-24 when it was created and such work continues to be under the Scope Rule of the Clerk's Agreement. Petitioner asserts that the work previously assigned to the abolished position remains and is now performed by an employee outside the scope of said agreement in violation of the Scope Rule and Rule 3-C-2 (a) (1), which are 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 Employes, 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 employee 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.

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

* * * * *

Store Attendants

* * * * *

When the duties of a position covered by this Agreement are composed of the work of two or more classifications herein defined in Groups 1 and 2, the classification or title of such a position shall be determined by the preponderance of the work that is assigned to such position."

"RULE 3-C-2

(a) When a position covered by this Agreement is abolished, the work previously assigned to such position which remains to be performed will be assigned in accordance with the following:

(1) To another position or other positions covered by this Agreement when such other position or other positions remain in existence, at the location where the work of the abolished position is to be performed."

Carrier contends that none of the duties previously performed by the incumbent of position Symbol B-24 were ever performed by the M. of E. Department material chaser and that the duties of the material chaser have never been assigned to nor performed by employes covered by the clerical rules Agreement. Carrier states that it is a well-established practice throughout the system for individuals assigned to positions of Material Chaser to perform work of hurrying material in conjunction with the other duties of their positions and that such duties in the instant dispute in no way encroached upon the rights of employes covered by the Clerk's Agreement. Carrier further asserts that the duties of the abolished position were absorbed by other store attendant personnel.

It is well established on this Division under such scope rules that the work performed must have been traditionally and customarily performed on a system wide basis by the employes covered by the particular Agreement to the exclusion of all others. The burden of proof through competent evidence is upon the Petitioner. Awards 11506, 12107, 7338, 7322.

Here the Petitioner has offered in evidence only the undisputed statement of the claimant outlining the duties formerly performed by him in the abolished position in support of its basic contention that the Carrier violated the Scope Rule of the Agreement by transferring such duties to another employe outside the scope of the agreement. Carrier denies the Petitioner's contentions and further questions the propriety of Petitioner asserting for the first time the alleged violation of Rule 3-C-2 (a) (1) which was not discussed on the property. Mere assertions do not constitute proof and will not support a claim. Awards 11834, 11645, 11525. Petitioner has failed to meet its burden of proof and we have no alternative but to deny the claim.

In view of the foregoing it is unnecessary for us to consider other matters raised by the parties including the objection of the Carrier to our consideration of the alleged violation of Rule 3-C-2 (a) (1).

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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 Carrier did not violate the Agreement.

AWARD

The Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of July 1964.