

Award No. 12837
Docket No. CL-12700

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Don Hamilton, 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 (GL-4970) that:

(a) The Carrier violated the Rules Agreement, effective May 1, 1942, except as amended, particularly the Scope Rule, at Olean Car Shop, Olean, New York, Northern Region, when it unilaterally removed work from under the scope of the Clerks' Rules Agreement and assigned it to employees not covered by the Clerical Agreement.

(b) A. M. Baker, Stores Laborer, should be allowed 8 hours' pay a day, as a penalty retroactive ninety days from April 14, 1956, to January 14, 1956, and all subsequent dates until the violation is corrected by returning the work to the employees covered by the Scope of the Clerical Rules Agreement. (Docket 682)

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 in this case, A. M. Baker, was the incumbent of a regular Group 2 position of Stores Laborer, Olean Car Shop, Olean, New York, Northern Region. He had a seniority date on the seniority roster of the Northern Region in Group 2, as of February 23, 1943.

ment 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 Agreement 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 Agreement 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 present claim is barred under Article V of the Agreement of August 21, 1954, and that in any event the work involved in this dispute is not work reserved exclusively to employees covered by the Clerks' Rules Agreement and that its performance by a Shop Laborer is not in any way violative of said Agreement.

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

(Exhibits not reproduced.)

OPINION OF BOARD: This claim involves certain cleaning work in the buildings and facilities at the Olean car shop, Olean, New York.

Prior to 1948 cleaning work at the Olean car shop was performed by a maintenance of equipment department shop laborer. From 1948 until near the end of 1954, the work was assigned to a Group II stores laborer position. On December 15, 1954, due to protests from the CIO, the work was removed from the stores laborer, included with shop laborer cleaning work, and given to a CIO carman. The stores laborer continued his assigned janitor work in the car shop office.

The employees contend that once the work was assigned to them, it could not be arbitrarily or unilaterally removed by the carrier, and assigned to employees of another class or craft.

The carrier maintains that the work which was given to the shop laborers rightfully belonged to them. It is urged that this work was in fact performed by the shop laborers for many years before it was given to the stores laborer. Carrier also alleges that the stores laborers do not have an exclusive right to this work, and that no stores laborer positions were abolished by the return of the work to the shop laborer.

Employees urge that Rule 3-C-2 of the agreement should be applied in this case. We are of the opinion, however, that Rule 3-C-2 is applicable only when a position is abolished per se. In this claim, no position was abolished, and so we do not find that Rule 3-C-2 is controlling.

It is further held that in the absence of proof of the parties' intent to grant to the Clerks the exclusive right to perform this work, it may well be assigned to another craft. We do not follow the line of thought that once work is assigned to clerical employees that it becomes theirs exclusively, absent some showing that the parties so intended by their agreement, or that Rule 3-C-2 has been violated and is applicable. Since we do not find proof of these exceptions, this claim is 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 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 11th day of August 1964.