

Award No. 12903
Docket No. CL-12929

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

William H. Coburn, 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-5026) that:

(a) The Carrier violated the Rules Agreement, effective May 1, 1942, except as amended, particularly the Scope Rule, when it required and permitted Yard Masters in the 400 Yard, Hawthorne Yards, Indianapolis, Indiana, Southwestern Region to perform Crew Callers' duties of transporting Form C. T. 362 switch lists between the Arlington Avenue and Emerson Avenue Yard Offices in an automobile furnished by the Carrier.

(b) The Claimant, G. E. Robards, a Relief Crew Caller, should be allowed eight hours' pay a day for the following dates on which named Yard Masters transported the C.T. 362 switch lists between Arlington and Emerson Avenues:

Yard Master Bordenkecker—November 7, 8, 14, 15, 21, 22, 28 and 29, 1959. 2nd Trick—3 P. M.-11 P. M.—December 5, 6, 12, 13, 19 and 20, 1959.

Yard Master Kingery—November 9, 16, 23, 30, December 7 and 14, 1959. 3rd Trick—11 P. M.-7 A. M.

Yard Master Kutche—November 10, 17, 24, December 1, 8 and 15, 1959. 3rd Trick—11 P. M.-7 A. M.

Yard Master Fulk—November 11, 12, 18, 19, 25, 26, December 2, 3, 9, 10, 16 and 17, 1959. 1st Trick—7 A. M.-3 P. M. (Docket 830.)

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.

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

(Exhibits not reproduced.)

OPINION OF BOARD: Notice of the pendency of this dispute was given to Railroad Yardmasters of America in accordance with the requirements of Section 3, First (j). That Organization declined to participate herein. Accordingly, the Board will proceed to a consideration of the case on the merits.

The relevant facts are that on or about November 6, 1959, the Carrier provided Yardmasters in the 400 Yard at Indianapolis, Indiana, an automobile which was used by them, among other things, to transport switch lists between points in the Yard. This work had previously been done by Group 2 Crew Callers covered by the Clerks' Agreement. The Carrier had furnished a station wagon for the use of these Crew Callers in calling and transporting train and engine service employees and in performing such messenger service as was required. The transporting of switch lists was included in the latter type of service.

The Carrier here relies on the "exclusivity theory" (Award 8331, among others) and insists that the Clerks cannot establish by evidence of past practice that they, and they alone, performed the specific work in dispute. Carrier attempts to make out an affirmative defense on this point by introducing certain affidavits signed by Yardmasters who state the practice has been for employees other than Clerks to perform the work of transporting waybills and switch lists from point to point within Hawthorne Yards. This evidence offered in support of Carrier's assertion made on the property that the Clerks had no exclusive right to the work because of the practice of others performing it, was not presented during the progress of the claim on the property. Consequently, the Employees were given no opportunity to attack its credibility or to offer controverting evidence. We hold, therefore, that its submission at this level of appeal comes too late. It will not, therefore, be given any weight here.

It is clear that the transportation work prior to November 6, 1959, was assigned to and performed by Clerks. There is no competent evidence that it had been assigned to and was, at the same time, being performed by others. The claim has its inception on the date of the first known violation, i.e., on November 6 when the Yardmasters began to transport the lists and waybills. As was said in Award 4045 (same parties and Agreement):

"... the fact remains that on that date it was transferred, ... to employees working under the latter agreement, (Clerks') and we are, therefore, called upon to deal with the dispute, here presented, under that agreement." (Interpolation ours.)

It is too well established to require citation of authority that work once placed under the coverage of a valid and effective agreement may not be arbitrarily or unilaterally removed therefrom. Here the record supports the contention that the disputed work was placed under the coverage of the effective Agreement and performed by Clerks until November 6, 1959, when it was removed therefrom by assignment to employees of another class. Accordingly, the Agreement was violated.

The claim will be sustained.

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 violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 17th day of September 1964.