

Award No. 12923
Docket No. CL-12489

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Nathan Engelstein, 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-4898) that:

(a) The Carrier violated the Rules Agreement, effective May 1, 1942, except as amended, particularly the Scope Rule, when it assigned the work of checking and loading LCL freight destined Bridgeville, Pennsylvania, to employees of the Pennsylvania Truck Lines Company at 11th Street Freight Station, Pittsburgh, Pennsylvania, Pittsburgh Region.

(b) Claimant M. Versino should be allowed four hours' pay a day, at the Receiving and Delivery Clerk rate of pay, for September 2, 1958, and all subsequent dates until the violation is corrected; Claimant J. N. Yadrick should be allowed four hours' pay a day, at the Trucker rate of pay, for September 2, 1958, and all subsequent dates until the violation is corrected.

[Docket 653]

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.

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 must be considered as barred, since it merely repeats a previously barred claim, and that the work performed by the trucking company's employees at Pittsburgh-11th Street Freight Station is not in any way violative of the Clerks' Rules Agreement, but rather is in conformity with the principles governing the proper division of work between the Carrier's forces and trucking company employees, as established by authoritative decisions rendered in previous disputes involving these same issues.

Therefore, the Carrier respectfully submits that your Honorable Board should deny the Employees' claim in this matter.

(Exhibits not reproduced.)

OPINION OF BOARD: Prior to January 16, 1956, less than carload shipments of freight destined for Bridgeville, Pennsylvania, not for local delivery in the city of Pittsburgh, were stopped at the 11th Street Station where they were transferred to other trailers and trucks operating in station-to-station service for their Bridgeville destination. This freight was checked and loaded in truck trailers by Carrier's employees, Group 1, Receiving and Delivery Clerks, and Group 2, Truckers — Freight or Baggage Clerks, covered by the Brotherhood of Railway and Steamship Clerks' Agreement. With the change to pick-up and delivery service, after January 16, the freight for Bridgeville was unloaded and checked by Pennsylvania Railroad platform forces from freight cars and placed in a designated zone on the freight station platform from which the Pennsylvania Truck Lines drivers and helpers then loaded the freight onto the truck, drove it to Bridgeville and delivered the shipments to consignees.

Organization makes claim that Carrier violated the Brotherhood of Railway Clerks' Agreement effective May 1, 1942, particularly the Scope Rule, when it assigned the work of checking and loading LCL freight destined for Bridgeville to be performed by employees of the Pennsylvania Truck Lines Company not covered by the Agreement. It maintains that since the work of checking, loading and trucking the freight has been performed exclusively and continuously by Group 1 and 2 employees of the Clerical Brotherhood whose positions are covered by the Scope of the Rules Agreement, Carrier acted arbitrarily in removing this work from them by unilateral action on January 16, 1956. It argues that once the work was assigned and the practice of performing it exclusively by these employees was exercised and maintained, it was improper for Carrier to remove and to reassign the work without re-negotiation.

Carrier takes the position that the claim should be dismissed for failure to adhere to the Time Limit Rule. In addition, it denies the claim on its merits, particularly emphasizing that there is no violation of the Scope and that applicable precedent has determined this issue. In regard to the contention that the instant case be barred under Time Limit Rule 7-B-1 because it presents the same dismissed claim filed in System Docket 92, we find enough variance in the claims to regard this submission as a new claim, and, therefore, proceed to consider the issue on its merits.

Important in this dispute is the question of whether or not the work under consideration is embraced by the Scope Rule. The nature of this particular Scope Rule has been considered in numerous awards. We concur with

the long line of awards represented by Nos. 10615 and 11963 that decided this Scope Rule is general in nature, for it lists positions without delineating or defining the work accruing to the positions. Hence, the Scope cannot be construed to have the effect of assigning any particular work to a classification of employees.

Moreover, the record does not support the claim to this work through a system-wide practice. For many years truck drivers and helpers have been permitted to assist in the loading of freight from platforms to trucks. This practice has been recognized by a number of awards of which we find particularly applicable Nos. 12451, 10903, and 11, 12 and 23 of Special Board of Adjustment No. 374.

We are aware that Clerks at the 11th Street Freight Station were assigned these duties, but their performance of the work at this location does not grant to them the exclusive right to this work. We find Decision 209 of the Clerical Miscellaneous Forces Board of Adjustment controlling in this dispute. The site and the physical action and conditions in connection with the performance of checking and loading freight in Decision 209 are virtually identical to those in the instant case. The cited case involved pick-up and delivery service, whereas this claim concerned station-to-station service. Although there is a difference in the destination of the freight in the two cases, this factor in no way changes the method of handling the freight or determines whether the work of checking and loading shipments between the zones on the platforms and the truck is work encompassed by the Scope of the Agreement.

As in Decision 209, which held that the work in question does not belong to Clerks exclusively, and that drivers and helpers of the trucking company may incidental to their work assist in moving freight from platform to truck, we also are of the opinion that the Clerks do not have exclusive right to this type of work in this area. Award No. 4388 is in accord with this position. We hold that the Agreement was not violated, and the request for compensation 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

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 28th day of September 1964.