

Award No. 13280

Docket No. CL-12202

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Francis M. Reagan, 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-4814) that:

(a) The Carrier violated the Rules Agreement, effective May 1, 1942, except as amended, particularly the Scope Rule, when it contracted the work of hauling repaired diesel material from the Storehouse, Heavy Repair Shops, Altoona, Pennsylvania, to Enola, Pennsylvania, Philadelphia Region, to an outside contractor, the E. R. Vipond Company of Bellwood, Pa.

(b) The work be restored to the Group 2 Chauffeurs at Altoona Works, and the fourteen named claimants be allowed eight hours pay a day commencing October 24, 1958, and continuing until the violation is corrected. (Docket 560)

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 Claimants in this case, C. S. Smith, P. W. Black, E. M. Carper, E. D. Douglass, J. F. Gandolfo, P. C. Matlack, J. L. McElwee, F. E. Wertz, V. Rutola, C. R. Decker, A. R. Hillard, L. C. Bryan, F. L. Beck and

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 and 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 of the Employees in this case would require the Board to disregard the Agreement between the parties thereto 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 work performed by the Vipond Company was not work accruing exclusively to clerical employees, that neither the Scope Rule nor any other Rule of the Agreement was violated, 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.

OPINION OF BOARD: Claim was made the Carrier violated the Scope Rule of its Rules Agreement of May 1, 1942, as amended:

"SCOPE

These Rules shall constitute an Agreement between The Pennsylvania Railroad Company and its employes of the classifications herein set forth as represented by the Brotherhood. * * *.

* * * * *

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

* * * * *

Chauffeurs (Stores and Station Departments)"

when it contracted the hauling of repaired diesel material from Altoona, Pennsylvania to Enola, Pennsylvania to E. R. Vipond Company, an Organization not covered by the referenced Agreement.

The Scope Rule involved in this Claim is of the general type listing classifications of employes without describing the work to be performed. Conform Award No. 12462 (Coburn) and others.

In this situation of a system-wide Agreement the Claimants must satisfy

1. The test of exclusivity in order to prevail; that is, the work must be shown through custom, practice, and tradition to be the exclusive possession of Claimants. Conform Award No. 11805 (Dolnick) and others.

2. The test of uniform practice, that is, that they have exclusively performed the claimed work. Conform Award No. 12360 (Dorsey) and others.

Upon a careful examination of this record in the light of the foregoing rules the claim cannot be sustained. The facts do not establish exclusivity and uniformity.

It is mandatory on the part of Claimants that they show an exclusive right to the work claimed. Failure to so establish is fatal to their claim.

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 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 10th day of February, 1965.