

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21339
Docket Number CL-21166

Frederick R. Blackwell, Referee

PARTIES TO DISPUTE:

(Brotherhood of Railway, Airline and Steamship
(Clerks, Freight Handlers, Express and Station
(Employes

(Robert W. Blanchette, Richard C. Bond and
(John H. McArthur, Trustees of the Property of
(Penn Central Transportation Company, Debtor

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-7785) that:

(a) Management violated the clerical rules agreement effective February 1, 1968, particularly 2-A-1, 4-A-1, Scope, plus others when they assigned work belonging to the Group 2 employees. The work of hauling crews and personnel was and has been their work and is a violation of the Agreement. The Terminal Service which started November 13, 1969 is doing work assigned to the Group 2 personnel, assigned to the Avon area at Indianapolis, Indiana.

(b) Mr. R. L. McGuire is assigned to 1st trick, is available for second trick every day in the week. Mr. LeRoy Somerville assigned to 2nd trick is available for 3rd trick. Mr. Harry Curtis is assigned to 3rd trick and is available for first trick. All three of these men are qualified since they are doing the same work the Terminal Service started doing.

(c) Mr. R. L. McGuire, Mr. LeRoy Somerville, and Mr. Harry Curtis should be compensated a day each for each day of violation. The violation started November 13, 1969, making November 13, 14, 15, 16, 17, 18, 19, 20, 21, 23, 24, 25, 26, 28, 29, 30 in violation and this is still going on.

OPINION OF BOARD: This is a Scope claim in which the Organization alleges that the Carrier violated the parties' Agreement when effective November 13, 1969, the Carrier contracted with an outside company for the performance of work theretofore performed by employes covered by the Scope of the Agreement. The work involved the transport of train and engine personnel between various points in the Indiana Terminal, namely, between Avon Yard, Indianapolis Union Station, and Bee Line City Parking area.

The Organization's Submission refers to the disputed work as encompassing the "handling of company mails, waybills, etc. (messenger service) within the limits of the Indianapolis terminal;" however, the Carrier asserts that this work is not mentioned in the statement of the claim and that it therefore should not be considered as an issue in the instant dispute. The record supports the Carrier's contention in this regard and the work described in the foregoing quotes is hereby dismissed as not being properly before the Board. The Carrier further asserts that the instant Scope rule is general in nature and that the Organization has not submitted the proof necessary to meet the evidentiary requirements of the doctrine of exclusivity which a Carrier may interpose as a defense under such a general rule. This point is also supported by the record and numerous prior authorities. See for example, recent Award No. 19789 which involved these same parties and the same Scope Rule. Accordingly, the claim will be dismissed.

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 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 the Agreement was not violated.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 16th day of December 1976.

