

Award No. 3003

Docket No. CL-2907

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Edward F. Carter, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**

SOUTHERN PACIFIC COMPANY—PACIFIC LINES

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(a) The Carrier violated the rules of the Clerks' Agreement when, on February 24, 1943, at Sparks, Nevada, it failed to call and use employees coming within the scope of Clerks' Agreement to transfer a carload of mail.

(b) Carrier be required to compensate each, T. H. Delano, H. W. Proctor, J. B. Lague, L. A. Burke, J. S. Bolander, and E. M. Swayne, for two (2) hours at the rate of their position on time and one-half basis, under the provisions of Rule 21 of our current agreement.

EMPLOYEES' STATEMENT OF FACTS: An agreement bearing date of October 1, 1940, as to rules and working conditions, is in effect between the parties to this dispute. The employees involved in this dispute are covered by the agreement.

At 2:50 A.M., February 24, 1943, there arrived at Sparks, Nevada, in train Extra 3743, car SP 4093 containing storage mail. The car was found to be "bad order," making necessary a transfer of the contents to car SP 6181, the transfer being accomplished by Car Department employees between the hours of 2:50 A.M. and 4:15 A.M. The Car Department employees who made the transfer do not come within the scope of Clerks' agreement with the Carrier. There were available for service during the period the Car Department employees were used to transfer the mail, employees coming within the scope of Clerks' Agreement who could have been called to perform the transfer work.

POSITION OF EMPLOYEES: Rules 1 and 21 of our current agreement are quoted below:

"Rule 1.

These rules shall govern the hours of service and working conditions of the following employees subject to the exceptions noted below:

(1) Clerks—

- (a) Clerical Workers
- (b) Machine Operators

(2) Other office, station and store employees—such as office boys, messengers, chore boys, train announcers, gatemen, baggage and parcel room employees, train and engine crew callers, operators of certain office or station appliances and devices, telephone switch board operators, elevator operators, office, station and warehouse watchmen and janitors.

CONCLUSION

The carrier asserts that it has conclusively established that the claim in this docket is entirely without basis or merit and, therefore, respectfully submits that it should be denied.

OPINION OF BOARD: On February 24, 1943, at 2:50 A. M., a car loaded with storage mail arrived in "bad order" at Sparks, Nevada, necessitating a transfer of its contents to another car. The Carrier used Car Department employees in making the transfer. It is the contention of the Organization that this work should have been performed by employees under the Clerks' Agreement. Claimants are employees within the Clerks' Agreement who could have been called for the work. They claim compensation for two hours at the rate of their positions on time and one-half basis under Rule 21 of the current Agreement.

It will be conceded at the outset that a carrier cannot remove work from the scope of one agreement which properly belongs to employees under that agreement. It will also be conceded that the claimants were employees covered by the Clerks' Agreement who were available to do the work if they had been called. The claim necessarily resolves itself into the question whether the work belonged exclusively to employees coming under the Clerks' Agreement. If it does, the claims should be sustained; if it does not, it is just as evident that the claims must be denied.

The Organization contends that the work in question is covered by the Scope Rule in the current Agreement. In determining the correctness of this assertion it must be borne in mind that the Scope Rule does not specify the work which falls within the Agreement. That it was intended that certain work did belong to the Clerks is an accepted fact if the Agreement is to have any validity at all. On the other hand, the contention that the Scope Rule provides that clerical employees under the Clerks' Agreement shall perform all clerical work has no foundation. Yet, the Agreement does reserve work. If the contract is to have any validity, and we have repeatedly held that it did have, the work reserved must be susceptible of definite determination. What, then, is the proper rule to be applied in determining whether work is within or without the Clerks' Agreement?

We think the correct rule is that the Clerks' Agreement reserves all work usually and traditionally performed by this class of employees, and all work in addition thereto which has been specifically reserved to them by the Agreement and subsequent negotiations. There are qualifications to this rule in the nature of exceptions as evidenced by the awards of this Division dealing with one-man stations, where the Agent or Agent-Telegrapher may under certain circumstances, perform work customarily performed by clerks, and awards permitting clerical work to revert to an employee of another craft where a force reduction occurs and such clerical work is incidental to the work of such other employee. There are other exceptions but it would serve no purpose to list them here. These exceptions to the general rule are of no importance here except to indicate that there is no intention to limit or extend them by this Opinion.

It must be observed that all mail handling work is not wholly performed by employees under the Clerks' Agreement. It is true that in heavily populated areas where the mail is heavy, positions designated as Mail Foreman and Mail Handlers have been established under the Clerks' Agreement. These positions were set up for the handling of mail in the usual course in station service. They were established by negotiation and Form C-21 Final by which they were set up evidences no intent what the work of transferring from a bad order car to one in good order is exclusively the work of the Clerks. This latter work is neither related nor incidental to the ordinary work of mail handlers. It must be noted also that at Sparks, Nevada, where the claim arose, there were no such positions created. The Carrier asserts, and the record is barren of any proof to the contrary, that the type of work constituting the subject matter of this claim has not been customarily and traditionally the exclusive work of employees under the Clerks' Agreement. Under such circumstances, we cannot say that the work belongs exclusively to the Clerks. There is nothing in the current Agreement indicating that this work, emergent in character, was even within the contem-

plation of the parties when the Agreement was negotiated or Form C-21 Final placed in effect.

This decision is based solely on the facts existing at the time the claim originated.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing thereon;

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 no basis for an affirmative award exists.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary.

Dated at Chicago, Illinois, this 29th day of November, 1945.