

Award No. 4126

Docket No. CL-4030

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

Francis J. Robertson, Referee

**PARTIES TO DISPUTE:**

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

**THE WESTERN PACIFIC RAILROAD COMPANY**

**STATEMENT OF CLAIM:** Claim of the System Committee that the work of handling the apron at San Francisco Freight Slip comes properly within the scope and operation of the Clerks' Agreement; that this work be assigned to employees holding seniority rights under the Clerks' Agreement and that all employees adversely affected by reason of failure of the Railroad properly to assign this work be compensated for all wage loss sustained subsequent to January 2, 1946.

**EMPLOYEES' STATEMENT OF FACTS:** On July 1, 1921 there was in effect an agreement between the parties governing employees represented by this Brotherhood. Attached hereto as Employees' Exhibit "A" is one page of Carrier's Western Division seniority roster of July 1, 1921 showing employees assigned to positions of boat tender. Employees' Exhibit "B" attached hereto is a page from Carrier's Western Division seniority roster dated January 1, 1922 and shows these same employees assigned to positions of slip watchman. Subsequently, employees performing work of watchmen or patrolmen were given police authority and transferred to the jurisdiction of the Special Agent. These employees however, continued to perform the work of raising and lowering the apron at San Francisco Freight Slip. The work of raising and lowering the freight slip at Oakland Mole has been for many years performed by employees coming within the scope and operation of the Clerks' Agreement.

**POSITION OF EMPLOYEES:** The following rule is cited from agreement bearing effective date of December 16, 1943:

Rule 1: "These rules shall govern the hours of service and working conditions of all of the following class of employees, subject to the exceptions noted below:

- (1) Clerks.
- (2) Other office, store and station employees, such as office boys, messengers, chore boys, train announcers, gate-men, baggage and parcel room employees, train and engine crew callers, operators of certain office or station appliance devices, telephone switchboard operators, elevator operators, office, station and warehouse watchmen and janitors, and other employees performing similar service.

Positions within the scope of this agreement belong to the employees covered thereby and nothing in this agreement shall be construed to permit the removal of positions from the application of these rules, except in the manner provided in Rule 64.

This agreement shall not apply to individuals where amounts of less than Thirty (\$30) Dollars per month are paid for special service which takes only a portion of their time from outside employment or business, or to individuals performing personal service not a part of the duty of the carrier."

There is nothing in this rule which places the work of operating the apron at 25th Street Freight Slip in the Clerks' Agreement.

There is absolutely no clerical work required at 25th Street Slip. The primary purpose of the patrolmen is to protect the Carrier's slip and other property. It is only a matter of a few minutes work, whenever a barge arrives at, or departs from, the slip to raise or lower the apron by manually turning a crank. The record clearly shows that during the entire history of this railroad the work has been done by men who are nothing more nor less than patrolmen. The settlement shown in Carrier's Exhibit "A" proves this beyond any doubt. James Mulcare, whose name appears on Sheet 3 of Exhibit "A" had been continuously on that job since December 1, 1909. Carrier's Exhibit "A", which bears the signature of the General Chairman of the Brotherhood of Railway Clerks is evidence of the fact that the Organization recognizes these employees as patrolmen. As shown by General Chairman McCarthy's letter of January 2, 1946, the Brotherhood of Railway Clerks released all right to represent that class of employees.

Mr. McCarthy's letter of April 29, 1947, contains the first mention of a claim for monetary settlement and was not handled during the progress of this dispute on the property.

**SUMMARY:** Carrier contends that the claim of the employees should be denied for the following reasons:

- (1) The work of operating the apron at 25th Street Freight Slip is not within the Scope of the Agreement.
- (2) For more than 36 years, until the instant dispute, the right of patrolmen to perform this work was recognized.

(Exhibits not reproduced.)

**OPINION OF BOARD:** While the essential facts in this case are contained in statements by the Employees and the Carrier, we deem it advisable for the purposes of this opinion to restate them in as nearly chronological order as possible.

Prior to December 15, 1943, three men who are now classed as patrolmen were assigned to positions at the San Francisco Freight Slip of the Carrier and were carried on a seniority roster of July 1921 under the jurisdiction of the Clerks. At that time they were designated as "Boat Tenders". A later seniority roster still under the jurisdiction of the Clerks, dated January 1, 1922, shows the same employees as being designated as "Slip Watchman". The record is somewhat nebulous with respect to the continuous designation of the three men assigned to the aforementioned positions until the date of December 15, 1943, but it does reveal that in a wage agreement of 1926 and 1927 between the Carrier and Petitioner, the men in these positions were designated as patrolmen, and in a collective agreement effective October 1, 1930, according to the Employees they were shown as "station and warehouse watchmen", and held seniority rights in District 14, Department of Chief Special Agent—Police Department. (According to Carrier's Statement of Facts, and not contradicted by the Employees, with the formation of a regular police department in April 1922, no regular police department having been formally established prior thereto, all patrolmen, irrespective of title, were transferred to the payroll of the Chief Special Agent's Department and have been continuously carried on said payroll.) As of February 1,

1931, at least one of the employees was designated as a patrolman on the roster of Chief Special Agent and it is assumed by the Employes' General Chairman that subsequent to January 1, 1922, the three men assigned to the positions at the San Francisco Freight Slip were designated as patrolmen. In any event there is no question but that from April 1922, the three employees assigned to the three positions in question were carried on the roster of the Chief Special Agent and it seems clear that since that time their designation was patrolmen.

Part of the duties of the three men assigned to the positions at the San Francisco Freight Slip, and designated variously as "boat tenders", "slip watchmen", "station and warehouse watchmen", and "patrolmen" was and presently is to raise and lower the apron at the Slip. The employees in the three positions in question at the San Francisco Freight Slip were represented by Petitioner until December 16, 1943, when the Clerks waived the right to represent patrolmen.

The Employes contend that the work of raising and lowering the apron has always been performed by employees covered by the Clerks' Agreement until the effective date of the current agreement, December 16, 1943, that although it waived its right to represent patrolmen, it did not waive its right to work historically within the Clerks' Agreement, and points out that the same type of work at Oakland Mole across the San Francisco Bay has likewise always been performed by employees within the scope and operation of the Clerks' Agreement and is presently being performed by such employees. On this basis it is reasoned that in view of consistent holdings of this Division that work once within the scope and operation of collective agreements can only be removed therefrom by agreement of the parties, the work of raising and lowering the apron at the freight station still belongs within the scope of the Clerks' Agreement.

A study of Rule 1, Scope Rule, upon which the Employes rely does not reveal any specific designation of work as such. The Scope Rule indicates only the classes of employees to whom it applies. Work, of course, is an attribute of a position or class of employees, as has been stated in many opinions of this Board.

In December of 1943 when the Clerks relinquished jurisdiction over patrolmen, this work at the San Francisco Freight Slip was an attribute of the position of the three patrolmen stationed there. This then would leave room for some inference (not necessarily conclusive) that when the Clerks relinquished jurisdiction over patrolmen they relinquished jurisdiction over work being performed by them, particularly if no reservation as to the work were made. But the record goes further than just the bare relinquishment of patrolmen from the jurisdiction of the Clerks' Agreement. Quoting from a letter of the Clerks' General Chairman to the Carrier's Vice President, we find the following language:

"The work of patrolmen continued under the coverage of the Clerks' Agreement until December 15, 1943, when it was conceded by this Brotherhood that the work of patrolman as presently performed on this carrier does not fall within the scope of the Clerks' Agreement." (Emphasis supplied).

Now, this work at the San Francisco Freight Station was being performed by these three patrolmen since 1927 so the Chairman must be presumed to have known the nature thereof when this concession was made. It is axiomatic that this Board will not make agreements for the parties; nor will it unmake them. In this instance it appears that the parties did make an agreement in December 1943, the effect of which was to remove the work of raising and lowering the apron at the San Francisco Freight Slip from the scope of the Clerks' Agreement. The fact that the work of raising an apron at Oakland Mole is performed by employees covered by the Clerks' Agreement at the present time is not controlling. Work cannot be mathematically apportioned. There is bound to be some overlapping in the duties

of different classes of employes. On the whole, therefore, we are of the opinion that there has been no violation of the Agreement by the Carrier.

**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 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 Carrier did not violate the Agreement.

**AWARD**

Claim denied.

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
By Order of Third Division

**ATTEST:** A. I. Tummon  
Acting Secretary

Dated at Chicago, Illinois, this 12th day of October, 1948.