

Award No. 4340
Docket No. CL-4321

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Frank Elkouri—Referee

PARTIES TO DISPUTE:

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

**CHICAGO, ST. PAUL, MINNEAPOLIS & OMAHA
RAILWAY COMPANY**

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

- (a) That Carrier violated Agreement Rules when it abolished Janitor Position 29, rate \$8.21 per day, St. Paul Mechanical Shops, effective April 7, 1948 and removed such duties from the scope of current Rules Agreement by assigning same to employes covered by another craft agreement, and
- (b) That Carrier now re-establish Janitor Position No. 29, rate \$8.21 per day; restore Janitor Nagle to same, and
- (c) That Carrier now compensate Janitor Nagle for six hours overtime each day of his assignment at one and one-half times \$9.53 daily rate, from March 20, 1948 until work is restored and he is returned to such assignment.

EMPLOYEE'S STATEMENT OF FACTS: Under date of April 5, 1948 Carrier issued bulletin abolishing Janitor Position 29, rate \$8.21 per day, effective April 7, and re-establishing Janitor Position 15, rate \$9.53 per day, effective April 8.

Carrier continued Janitor William Nagle on assignment of duties of higher rated Janitor Position 15, which he had been instructed to perform, commencing March 20, 1948.

On March 20, 1948, the work assigned to abolished Janitor Position 29, rate \$8.21 per day, had been removed from the scope of current Rules Agreement by assignment of such work to a still lower rated Shop employe covered by another craft agreement.

This removal of work from scope of the Agreement was continued following issuance of bulletin of April 5, 1948, and is still in effect.

Employes protested and entered claim for Janitor Nagle for six hours overtime compensation each day of his assignment from March 20, at one and one-half times \$9.53 daily rate, account Shop employe not covered by current Rules Agreement being assigned duties formerly performed by Janitor Nagle on Position 29, rate \$8.21 per day.

OPINION OF BOARD: This Board has repeatedly held that a Carrier may not arbitrarily take work from under the scope of an agreement in that such a prerogative would be destructive of the agreement. The parties here are in extreme conflict as to the amount of janitor work involved in Janitor Position 29. Petitioners contend that upon discontinuing Janitor Position 29 on April 7, 1948, the Carrier removed a total of six hours' work per day from the scope of the Clerks' Agreement. It is not necessary for this Board to determine the exact amount of janitor work removed from the operation of the Agreement; the important thing is that the Board finds that a substantial amount was in fact removed by the unilateral action of the Carrier, and that this work was assigned to persons not coming within the scope of the Clerks' Agreement. In Award 2387 this Board said:

"* * * That the Carrier cannot farm this work, or any part of it, to a person not covered by the Clerks' Agreement without violating that Agreement has been decided by this Division on numerous occasions. See Awards 2005, 1808 and 1673. The fact that the amount of work involved is small, or that no reduction of force resulted does not change the meaning of the Clerks' Agreement. The applicable schedule makes no exceptions in these respects. We can see where one assignment of a small amount of Clerks' work would cause no appreciable injury to the employees under the Clerks' Agreement. But the cumulative effect of a number of such assignments could well eliminate an otherwise required force increase or result in a reduction of force. * * *"

When the Carrier removed work from the Clerks' Agreement, by assigning it to persons not within the scope of that Agreement, it violated Scope Rule 1 and Seniority and Promotion Rules 3, 4 and 6.

The Board cannot accept the Carrier's contention that Janitor Position 29 was not within the scope of the Clerks' Agreement. The Records in Awards Nos. 4338 and 4339 show that for many years this position had been considered to be within the scope of the Agreement; they show that this position had been filled under the terms of the Agreement, and that the incumbent of the position had acquired seniority rights under the Agreement. The Board finds no sufficient basis for sustaining Claim (c).

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 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 Carrier violated the Agreement.

AWARD

Claims (a) and (b) sustained; Claim (c) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 14th day of March, 1949.