Award No. 6284

Docket No. CL-6232

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Adolph E. Wenke, Referee

PARTIES TO DISPUTE:

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

CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes, that

(1) The Carrier violated the Agreement, effective February 28, 1949, and is continuing to violate same by assigning clerical work to the Footboard Yardmaster and Conductor.

(2) Clerical employes, W. H. Hurd and T. H. Estes, be paid a call for each violation in accordance with time claims filed, as they were available to work on each day the claim was filed.

(3) The violation shall be discontinued and clerical work returned to the clerical employes at Sayre, Oklahoma.

EMPLOYES' STATEMENT OF FACTS: There is in evidence, an Agreement between the parties to this dispute, bearing an effective date of August 2, 1945.

The following instructions were issued by the Carrier covering operation at Sayre, Oklahoma:

(From Trainmaster J. L. Stephenson to Agent Adams)

"El Reno 1152 A. M. 10/16/48

"L J A-Sayre

"Bulletin Board

"Conductors effective date wheel reports on 991, 994. Will go through between El Reno and Amarillo. Condrs. will furnish Sayre Yard three copies of Switch list and one copy for outgoing conductor. Waybills for cars moving through Sayre will be delivered with

the past 32 years and the fact that the Clerks' Organization prior to the negotiation of the first Clerks' Agreement was aware that this work was that which may be performed by a footboard yardmaster, we respectfully petition the Board to deny the claim.

(EXHIBITS NOT REPRODUCED)

OPINION OF BOARD: The System Committee contends the Carrier is violating the provisions of its Agreement with the Clerks by having either a conductor or a Footboard Yardmaster perform certain clerical work at its Sayre, Oklahoma, yard. It asks that this violation be discontinued and that clerical employes W. H. Hurd and T. H. Estes be paid for a "Call" for each violation. The claim is made for all such violations on and after February 28, 1949.

The work complained of relates to trains 991 and 994 passing through Sayre and consists of six items fully described in the Organization ex parte submission. The work is without doubt of a clerical nature. It appears that all work of this type performed at Sayre has always been performed by clerical employes until October 16, 1948 when, as to trains 991 and 994, it was assigned to and performed by the respective conductors thereof. This continued until February 28, 1949, the date from which this claim is made, when, as to these two trains, it was assigned to the Footboard Yardmaster, a position first established at Sayre on September 28, 1941. The Footboard Yardmaster has, since that date, been performing it except as to item five. This relates to a report the requirement for which has been discontinued. Neither conductors nor the Footboard Yardmaster are covered by the Clerks' Agreement.

Carrier says the change was made to expedite the movement of these two trains through Sayre. Carrier has the right, and duty, to operate its facilities in the most efficient and economical manner possible but its right to do so does not permit it to violate its collective bargaining agreements with its employes. In other words, its authority in this regard is circumscribed by the limitations it has placed upon itself thereby.

It is the Carrier's thought that since clerks' agreements, such as here, do not necessarily encompass all clerical work performed in the service of the carrier and, since the clerical duties here performed are normally incident to the duties of a Footboard Yardmaster, that it was within its rights in having the occupant of that position perform them.

We think the duties here involved have a direct relationship to the duties of a Footboard Yardmaster in breaking up and making up of these trains and therefore are clerical duties normally incident to the duties of that position See Awards 613, 1849, 2052 and 5112 of this Division.

Clerical work, in its technical sense, performed by an employe not covered by the Clerks' Agreement as incident to the duties of his regular assignment is not necessarily within the Clerks' Agreement. See Award 3989 of this Division.

Consequently if Footboard Yardmasters had always been performing this work at Sayre then the Organization could not require Carrier to give it to clerks for, as already stated, the Clerks' Agreement does not necessarily encompass all clerical work performed in the service of the Carrier as there are few, if any, employes who do not perform some clerical work in connection with their regular assigned duties. See Awards 806, 1849, 2052, 2674 and 4559 of this Division. But that is not the situation here.

It is also true that normally the occupant of a position can perform the clerical work incident to the performance of his duties and if, because of an increase in the amount of his duties, this clerical work is more than he can handle and flows out to a clerical position it can, if the duties of the position again decline so he can perform it, ebb back thereto and such is not in viola-

tion of the Clerks' Agreement. But here the ebb and flow theory of work incident to a position has no application since the work involved has always been performed at Sayre by clerks and never by a Footboard Yardmaster prior to February 28, 1949. In fact no such position was in existence prior to September 28, 1941.

We are here dealing with clerical work that could be said relates to and is normally incident to the position of a Footboard Yardmaster's duties but which has, at Sayre, always been exclusively performed by clerks until the change herein set forth was made as it relates to trains 991 and 994.

The Scope Rule of the Agreement herein involved embraces all work on the Carrier's property of the kind and class which employes of the named positions included therein usually and customarily performed at the time of the negotiation and execution thereof. See Awards 4513 and 6101 of this Division.

We find the following, announced in Awards 5526 and 5973 of this Division, applicable: As to scope rules similar to that here involved, we have held that while they do not purport to describe work encompassed but merely set forth the class of positions to which they are applicable, yet the traditional and customary work assigned exclusively to those positions constitute work falling within the Scope of the Agreement and it is a violation of the Agreement for the Carrier to permit persons not covered by the Agreement to perform it. See Award 6101.

It is a fundamental rule that work of a class covered by an agreement belongs to those for whose benefit the contract was made. A delegation of such work to others not covered by the Agreement is in violation of the Agreement except as the parties in their Agreement may otherwise provide. See Awards 360, 1300 and 1647 of this Division.

When work is within the scope of a collective agreement and not within any exception contained therein or any exception recognized by the Board as inherently existent, that work belongs to the employes under the agreement and may not be taken therefrom with impunity. See Award 4513 of this Division.

We find the Carrier violated the Clerks' Agreement when it assigned the work, to which this complaint is directed, to a Footboard Yardmaster at Sayre as it is, under the facts before us, the exclusive work of the Clerks. It should, however, be understood that this holding relates only to the situation at Sayre for the factual situation at other points on Carrier's system may make it permissible for Carrier to do there what it attempted to do here and, under the Agreement, have a perfect right to do so. See Award 2044 of this Division.

Carrier says that Footboard Yardmasters are covered by its Agreement with the Switchmen's Union of North America, first entered into in 1919, and that the work here in dispute is specifically covered by the language of Rule 13 (b) thereof, giving the source of the language used. We are not here involved with the construction or interpretation of that Agreement or the Rule thereof. Nor would we have authority to do so if so inclined as it is not properly before us. The facts are the clerical forces at Sayre have always performed it and it is clerical work. Whether or not it is also covered by the scope of the Switchmen's Agreement is another question which, when presented in the proper manner to the proper Division, that Division can decide.

It would appear that the work was performed while claimants were on duty. Just what significance that fact would have on the claim is not made apparent. This is not a claim based on a contention that claimants did not work the full time of their regular assignments. It is a claim based on the contention that Carrier removed from the Clerks work, which by their Agreement with Carrier, they had a right to perform. Once it has been deter-

mined that such a violation has taken place then, to make the Agreement effective, Carrier must pay for the work lost. Who the Organization names as claimants to receive pay therefor is only incidental to such a claim as long as they are within the class who would have a right to perform the work. See Award 2282 of this Division.

Reference is made to the fact that only a small amount of work is involved. But work of a class is made up of many small items of work and to open the door at all is to invite a further entrance until it is completely open and the agreement made ineffective. See this Divisions' Award 2282. But the work is not of an insignificant amount. Admittedly it involves 35 to 40 minutes of time in connection with each train. In addition to this it apparently would take some time to get to and from where the work must be performed. The claim is made for a "Call" in each instance. We think this is the proper basis for the claim as it is the minimum basis of pay provided by the Agreement for calling an employe to do work.

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 Carrier violated the Agreement.

AWARD

Claim sustained on the basis of a call for each time the Footboard Yardmaster at Sayre performed this clerical work in connection with handling either Train No. 991 or 994 since February 28, 1949.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois this 3rd day of August, 1953.