

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Donald F. McMahon, Referee

PARTIES TO DISPUTE:

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

CHICAGO & EASTERN ILLINOIS RAILROAD COMPANY

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

(1) The Carrier violated the Clerks' Agreement when they abolished the second trick Train Crew Caller position at Evansville, Indiana, June 28, 1949, with regularly assigned hours of 2:00 P. M. to 11:00 P. M., and concurrently therewith changed the hours of the first trick Train Crew Caller from 5:00 A. M. to 2:00 P. M. to then work from 12:00 Noon to 9:00 P. M. which resulted in the removal of Train Crew Calling during the hours of 5:00 A. M. to 12:00 Noon and 9:00 P. M. to 11:00 P. M. from the Class II employees in Seniority District 32 and thereafter required Telegraphers and a Class I employe in another Seniority District to perform those theretofore regularly assigned Crew Caller duties; and

(2) That Class II employes, J. H. Wunderlich, former regular assigned second trick Crew Caller, with hours 2:00 P. M. to 11:00 P. M., and the relief employe, R. S. Lindley for such days as he would have relieved the two former Crew Callers, be compensated for all wage loss sustained; and that

(3) Other employes adversely affected thereby, be allowed compensation for monetary loss sustained thereby. (To be determined by joint check of payroll and other Carrier records.)

EMPLOYEES' STATEMENT OF FACTS: For many years prior to June 28, 1949, there were the following listed Crew Caller positions regularly assigned in Seniority District No. 32 at Evansville, Indiana:

L. J. Blackman—hours 5:00 A. M. to 2:00 P. M.—Monday rest day.

J. H. Wunderlich—hours 2:00 P. M. to 11:00 P. M.—Tuesday rest day.

with R. S. Lindley regularly assigned to perform the relief of these two positions along with others grouped to make a six day relief position. These two positions with their relief were so assigned as of July 1, 1945, the effective date of our Scope Rule Agreement.

be applied, this Board will recognize the interpretation thus resulting (see Awards 3194, 4727, 4086, 4240, 4342, 5013, 5404 and 5439).

Award 4240—"By reason of the traditional practice of long standing it is considered to show the interpretation the parties placed on the agreement. Failure to deal directly with this practice in the adoption and revision of the agreements over a long term of years is conclusive of the intention with reference thereto."

Award 5404—" * * We are further convinced that the uncontroverted record facts not only establish a custom and practice, but almost a tradition, clearly indicating an understanding and intention on the part of all parties to the present agreement. * * *"

There has never been a definite clear-cut line of demarcation at Evansville limiting the work of calling crews to the respective seniority districts. From the record, it is apparent that clerical forces from Seniority Districts 14, 17, 30 and 32 have always performed work within more than one of these districts—Trainmaster's clerks (District No. 17), enginehouse clerks (District No. 14) and messengers from District 30 have performed certain work in connection with the calling of crews while callers from District 32 have performed certain clerical work normally falling to clerks in other districts and messengers (District 30) also performed various work for offices in all of these districts.

Surely a practice of more than thirty-five years falls within the above interpretation and is sufficient to establish a precedent which cannot now be denied as falling, " * * * within the contemplation of the parties and approved. * * *"

On the evidence and on precedence, your Board must recognize and apply the rule that long established and well recognized practice must not be disturbed. Applied to this case, this means that neither the fact that Operator-Clerks nor clerical employees in other seniority district (who incidentally were located in the same office as the Callers) are prohibited from assisting in the work of calling crews by telephone during the absence of or during the hours when this work is not assigned to Callers. The Organization should not now be permitted to successfully contend that these assignments are improper or that the agreement has been violated. The situation has not changed from the beginning of the practice to the present time. It is Carrier's position that the claim is entirely without merit and should be denied.

The Carrier affirmatively asserts that all data contained herein has been handled with the employees' representatives.

(Exhibits not reproduced).

OPINION OF BOARD: The Organization is making claim that Carrier has violated the current agreement between the parties, by its action in abolishment of second (2nd) trick Caller position at Evansville, Indiana, on June 28, 1949, resulting in the removal of Train Crew calling from Class II employees in Seniority District 32, and requiring Telegraphers and a Class I employee from another Seniority District to perform the work of the abolished position. In addition, monetary claim is made for employee J. H. Wunderlich, Class II employee, and regularly assigned, and also for relief employee R. S. Lindley, for all wage loss sustained by them. In addition, claim is made for monetary loss for all other employees adversely affected by Carrier's action, said employees to be determined by joint check of payroll and other Carrier records.

No claim is made by the Organization subsequent to June 1, 1950, when Carrier placed in operation the Wansford Yard, and the position and work in question herein became operative under the Clerks' Agreement.

Carrier first contends that this Board has failed to require Notice be given the Telegraphers' Organization; that rights of employes of that Organization may be adversely affected by any Award this Board may make, by failure to give such Notice. It is clear in the record that the Clerks' Organization are the complaining party, and the Telegraphers and other employes were given the work by Carrier. It is also clear in the record that claims, if any are sustained, could be only for a definite and closed period between the dates of June 28, 1949 and June 1, 1950, when the work in question was taken over by agreement with the Clerks' Organization. Therefore, the Board is of the opinion that the question raised by Carrier is moot and should be denied for reasons above stated. This Board has recently expressed itself, covering this same question, in Award No. 6293.

Carrier contends that it has in no way violated the Agreement, and further relies on the long established practice that neither Operator-Clerks nor clerical employes from another Seniority District are prohibited from the work of calling crews by telephone during the absence of or during the hours when the work is not assigned to Callers.

Carrier abolished the second trick Train Crew Caller June 28, 1949, having assigned hours of 2:00 P.M. to 11:00 P.M., and at the same time changed the hours of first trick Train Crew Caller from 5:00 A.M. to 2:00 P.M. to new hours of 12:00 Noon to 9:00 P.M., which resulted in eliminating the second trick Crew Caller, and also resulted in the removal of Crew calling from 5:00 A.M. to 12:00 Noon, and from 9:00 P.M. to 11:00 P.M. It is from the abolishment of the second trick Crew Caller position and shifting the hours of the first trick that resulted in the filing of these claims, and for which the Organization contends Carrier required Telegraphers to perform the work, and in addition a Class I employe from another Seniority District also was used to perform duties of the abolished position.

The current Agreement between the parties became effective February 1, 1922, and the Scope Rule, Section 2, among other things, makes provision for employes performing manual work not requiring clerical ability, and provides for **train and engine crew callers**. Section (b) of the Exceptions provides that employes covered by other agreements, etc., may perform work in connection therewith. It is noted that effective July 1, 1945, the parties amended the original Agreement and amended Rules 1—Scope Rule, and Rule 5—Seniority Districts. Group 2, as provided in the new Scope, names train and engine crew callers as positions coming within Group 2. The Scope Rule, as amended, further provides:

"Positions or work within the scope of this agreement belong to the employes covered thereby and nothing in this agreement shall be construed to permit the removal of positions or work from the application of these rules except in the manner provided in Rule 84."

Rule 84 is the Closure Rule and provides the Agreement shall remain in effect until revised or abrogated, etc.

It is true, as Carrier contends, that for many years prior to filing of these claims, approximately 35 years, that a portion of the crew calling duties was performed by Telegraphers, or other clerical employes, and such was the custom and practice on this particular railroad. But when the Agreement was amended by the parties, July 1, 1945, and the Scope Rule was rewritten, we must hold that the practice and custom of using employes other than regularly assigned Crew Callers, was completely abrogated by the parties when the Scope Rule 1 was rewritten, and, further, that the Scope Rule as rewritten is clear and concise and is in no way ambiguous. It is, therefore, the opinion of the Board that Carrier has violated the provisions of the Scope Rule as alleged. Nor can it be said that a continuance of the practice from the effective date of the rewritten Scope Rule to the time of filing the claims herein, on June 29, 1949, would reestablish the custom and practice as formerly under the original Scope Rule.

Many Awards have been cited by the parties, but from a reference, many do not apply where the Scope Rule involved is clear and unambiguous. We reaffirm the Awards of this Division, as applying to the facts before us, and cite Awards 3506, 3890, 4977 as sound and expressing our views.

As to the contention of the Organization that Carrier required the service of a Class I employe of another Seniority District, namely Miss Harns, employed as Chief Clerk to the Trainmaster and holding seniority in District 17, but not in District 32, we hold this is a violation on the part of Carrier for the reason Carrier cannot combine work to be performed in more than one Seniority District, and the work belonged to the Callers, as provided by Rule 5 of the Agreement, as amended, effective July 1, 1945. Awards 6016, 6024, 4076, 2354.

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 has violated the Agreement as alleged.

AWARD

Carrier's contention that the Board failed to notify 3rd party, has no merit for reasons as stated in the Opinion.

Claim of Employes sustained as stated in the foregoing Opinion and Findings, with the provision that no claim shall extend beyond July 1, 1950.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 2nd day of October, 1953.