Award No. 8256
Docket No. CL-7907

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Norris C. Bakke, Referee

PARTIES TO DISPUTE:

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

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY

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

1) Carrier violated and continues to violate the Clerks' Agreement when, effective February 21, 1954, it discontinued using Warehouse Foreman Carl French to perform the work of handling mail and baggage on and off Train No. 11 at Spencer, Iowa on Sundays and assigned the work to employes outside the scope and application of the Clerks' Agreement.

2) Carrier shall compensate Employe French for five hours and twenty minutes (5'20") at the time and one-half rate of pay applicable to his position, No. 71, for Sunday, February 21, 1954 and each subsequent Sunday that the violation continues.

3) Carrier shall restore the work of handling mail and baggage on and off Train No. 11 on Sundays to the Clerks' Agreement and the employes covered thereby.

EMPLOYES' STATEMENT OF FACTS: The work of handling mail and baggage at Spencer, Iowa is work that has been assigned to and performed by employes covered by the Clerks' Agreement for many years as evidenced by bulletins attached as Employes' Exhibits "A", "B", "C" and "D".

Employe Carl French, clerical seniority date of January 16, 1946 and nonclerical date of March 1, 1920, is occupant of Position No. 71, Warehouse Foreman at Spencer, Iowa. The assigned hours of the position are 8:00 A. M. to 5:00 P. M. with one hour for lunch, Monday through Friday with assigned rest days of Saturday and Sunday, rate of pay $13.696 per day.

Prior to February 21, 1954 Employe French was assigned to the work of handling mail and baggage on and off Train No. 11 during his regular tour of duty and received calls on Saturdays to handle mail and baggage for Trains No. 11 and No. 22, and a call on Sunday to handle the work for Train No. 11. On February 19, 1954 Employe French was notified by the Agent at Spencer that effective February 20, 1954 he would discontinue

at the time our scope rule was agreed upon, employes within the scope of that agreement were not performing exclusively nor have they ever performed exclusively the work of handling mail at Spencer.

It is the Carrier's position that:

1. The handling of mail is not the exclusive work of employes covered by the scope of the Clerks' Agreement.

2. The handling of mail at Spencer has never been performed exclusively by employes covered by the scope of the Clerks' Agreement. In fact, the records show that only in recent years have such employes shared in *such work at Spencer to which they now claim an exclusive right.*

3. The agent and operator have always performed and continue to regularly perform the work of handling mail at Spencer.

4. It is necessary that the agent be on duty on Sunday in connection *with the movement of trains and while on duty he is now able, because of* reduced volume, to handle the mail on Train 11 without assistance.

Under those circumstances there can be no proper basis for a sustaining claim which would cause the Carrier to needlessly undergo the expense of a call of 5 hours and 20 minutes at the rate of time and one-half to the warehouse foreman on Sunday for the single purpose of assisting with the handling of mail in connection with Train No. 11 (scheduled at Spencer for a period of 28 minutes), even though his services are not required in connection therewith.

We respectfully request that the claim be denied.

All data contained herein has been presented to the employes.

(Exhibits not reproduced)

OPINION OF BOARD: Claimant seeks compensation at time and a half rate for five hours and twenty minutes account Carrier violated the agreement when it discontinued his services in connection with the handling of mail on train No. 11 at Spencer, Iowa on Sunday, February 21, 1954 and for each Sunday thereafter as long as the violation continues.

Carrier admits "There is no dispute about the fact that for many years employes covered by the Clerks' Agreement have performed work in connection with the handling of mail and baggage at Spencer" but the record also shows that the handling of mail was not done exclusively by anyone under the Clerks' Agreement.

The Organization contends that Carrier violated that portion of Rule 1 (e) which reads as follows: "Positions 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** from the application of these rules, except in the manner provided in Rule 57". (Emphasis ours)

It is not contended that Claimant's position was abolished because he has continued to help with the mail on his regularly assigned days, but the Organization argues that the words "position" and "work" are for the purposes of the agreement synonymous. Such is a fair statement of the holding of a number of our awards, but it does not necessarily follow that these Awards are controlling in the instant situation. Typical of such Awards is 1314 of this Division.

On the other hand we quoted from Award 3563 in Award 5785 which involved this same Carrier and the same rule "The foregoing awards do not apply because of the express provisions contained in the confronting

agreement to the effect 'no position shall be removed from this agreement except by agreement.' "

The Organization just cannot brush away that right of the Carrier, which has the same right to rely on Rule 57 in this case, as the Organization has a right to rely on Rule 1 (e).

It is a fact in this case that the Organization sought to have this Carrier accept the rule to include the word "work" but failed, and since the rule on some Carriers recognizes the distinction between "position" and "work", we have no right to legislate for the parties here.

Our conclusion is that the work involved did not belong exclusively to Claimant and Carrier did not violate the Agreement. Claims 1, 2 and 3 must be denied.

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

Claims 1, 2 and 3 denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 27th day of February, 1958.