

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**Harold M. Weston, Referee**

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**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:

(a) That Carrier violated the rules of our current Agreement when on April 30, 1956, it unilaterally turned the work of making inspection of damaged freight at the Alford Refrigerated Warehouse at Dallas, Texas, over to the W.W. & I.B.; and

(b) That R. C. Dunn, Claim Clerk at Dallas, be allowed two (2) hours and forty-five (45) minutes pay at overtime rate for each date from August 30, 1956 until the violation has been corrected.

**EMPLOYEES' STATEMENT OF FACTS:** The Alford Refrigerated Warehouse Company, Dallas, Texas, completed building their present warehouse and placing it in operation during the year 1948. The Rock Island Railroad opened their Local Freight Office and Station at Dallas, Texas, in May, 1948, and the duties of inspection of damaged freight, May, 1948, were assigned to the Chief Clerk to Local Agent of the Rock Island Railroad. This Chief Clerk continued to make such inspections of damaged freight until December 1, 1952. Effective December 1, 1952, the Rock Island Railroad established a position of Claim Clerk at Dallas, Texas and the duties of making inspections of damaged freight at the Alford Refrigerated Warehouse Company were then, on December 1, 1952, assigned to the Claim Clerk, R. C. Dunn, and Mr. Dunn continued to make these inspections of damaged freight until April 30, 1956, when he was advised by the Local Agent that he, as a Claim Clerk, would discontinue making the inspections of damaged freight at the Alford Refrigerated Warehouse Company, as the work was being taken over by the WW & IB.

August 30, 1956, Mr. R. C. Dunn, Claim Clerk, filed claim for 2¾ hours' pay at punitive rate of the Claim Clerk position, rate \$358.88, for that date and each date thereafter until the violation has been corrected, because of the work which he had been performing and which had been performed by Clerks under the clerical Agreement on the Rock Island Railroad continually, since the Alford Refrigerated Warehouse was opened for business, had now been assigned or contracted to employees of another company. The claim was declined by the various railroad officers and on April 24, 1957, the Manager of Personnel declined the claim.

An Agreement between the Carrier and the employes of the Carrier represented by the Brotherhood of Railway and Steamship Clerks, bearing an effective date of August 2, 1945, is on file with your Board and by this reference is made a part hereof.

**POSITION OF CARRIER:** The Scope Rule of the Clerks' Agreement does not describe the work reserved to clerks. It sets forth the classes of position to which it is applicable. The work intended to be encompassed by the Scope Rule is necessarily that which is traditionally and customarily performed by the occupants of the positions therein described.

The Scope Rule of the Clerks' Agreement reads, in part, as follows:

"Western Weighing and Inspection Employes (when their entire time is devoted to Rock Island business)."

There are six different railroads using the services of the W.W.&I.B. Inspector at Alford's Warehouse at Dallas and, therefore, the work in question is not covered by the Scope Rule of the Clerks' Agreement quoted above.

In submitting the claim in the instant case, the claimant in his claim, quoted below, admitted that all of the time of the W.W.&I.B. Inspector is not devoted to Rock Island business:

"I claim 2 hours and 45 minutes this date and each date hereafter so long as this practice continues account WW&IB Inspector inspecting damaged Rock Island freight at Alford's warehouse per Rule 1, Section 1 of the Clerks' Agreement as his entire time is not devoted to Rock Island business."

Under the provisions of the current agreement, it is permissible to turn work of this kind over to the W.W.&I.B. so long as the W.W.&I.B. employe does not devote his entire time to Rock Island service. Inasmuch as the W.W.&I.B. employe is not performing work for the Rock Island alone, the Scope Rule of the Clerks' Agreement is not applicable.

Your Board has ruled in a number of cases that the Scope Rule of an Agreement is general in character and that in no way defines the work to be performed nor does it allow the organization the exclusive right to all clerical work to be performed. (See Awards 615, 6269, 7364, 7194, 7198, 7245, 7246).

For the above reasons, the Carrier has declined the claim and respectfully requests your Honorable Board to uphold its position in this case.

It is hereby affirmed that all of the foregoing is in substance known to the employes' representatives and by this reference is made a part hereof.

**OPINION OF BOARD:** The claim is that certain work involved in making inspections of damaged freight at a warehouse company was removed from the Clerk's Agreement, in violation of its provisions, and contracted out to the Western Weighing and Inspection Bureau (herein referred to as the W.W.I.B.).

It is uncontroverted that the work in question had been assigned to Carrier's Chief Clerk from 1948 to 1952 and Claim Clerk from 1952 until the removal now complained of which occurred on April 30, 1956. There is no question but that the Chief Clerk and Claim Clerk are covered by the Clerks

Agreement. That the duties here concerned are in their essence of a clerical nature and class covered by the Clerks Agreement is equally clear.

This is not a case involving two or more crafts or a negligible quantity of work. Here a substantial part of the work content of a position that had been consistently performed by clerical employes under their Agreement for a number of years has been removed from the protection of that Agreement by Carrier's unilateral action. Such a pattern cannot be upheld since it tends to undermine the foundations of the collective bargaining Agreement and to deprive it of vitality and meaning.

In this setting, the fact that the Scope Rule also lays claim to W.W.I.B. employes when their entire time is devoted to Carrier's business does not mean that the converse is true and that Carrier can validly transfer work outside the Agreement that had covered such work for at least eight years.

We conclude that Carrier did violate the Agreement by removing the disputed duties from its coverage and having them performed elsewhere. The claim will be sustained except that compensation under part (b) thereof will be limited to the pro rata rate since no justification is perceived for allowing the overtime sought by Petitioner.

**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 Agreement was violated.

#### AWARD

Claim sustained to the extent indicated in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 13th day of September 1961.

#### DISSENT TO AWARD NUMBER 10070, DOCKET NUMBER CL-9807

Each of the parties is responsible for the express inclusion of the inspection work in the Scope of the Agreement when the ENTIRE TIME of an employe is devoted to such work. Such inclusion of ENTIRE TIME must be taken as exclusion of all instances of lesser time devoted to such work; otherwise, the parties agreed to a useless condition.

It is our function to interpret the Agreement as it now stands and not to rewrite it.

Award 10070 is patently erroneous. Therefore, we dissent.

/s/ J. F. Mullen

/s/ P. C. Carter

/s/ R. A. Carroll

/s/ W. H. Castle

/s/ D. S. Dugan

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**INTERPRETATION NO. 1 TO AWARD NO. 10070**

**DOCKET NO. CL-9807**

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**NAME OF ORGANIZATION:** Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees

**NAME OF CARRIER:** Chicago, Rock Island and Pacific Railroad Company

Upon application of the representatives of the Carrier involved in the above award, that this Division interpret the same in the light of the dispute between the parties as to its meaning and application, as provided for in Section 3, First (m) of the Railway Labor Act, approved June 21, 1934, the following interpretation is made:

We have reexamined the award with care and are satisfied that it is clear, definite and without ambiguity. Its plain meaning is that Claimant Dunn is entitled to compensation on a two hour and forty-five minute pro rata basis for the entire period beginning August 30, 1956, and ending on the date the violation is corrected. There are no exceptions or limitations to this period and we find no justification for Carrier's view that under the award Claimant is entitled to compensation for only those days on which he worked as Claim Clerk.

We might add that, in our opinion, the record is amply clear that R. C. Dunn, and not the Dallas Claim Clerk position, is the Claimant in the present case. That the Carrier understood the true nature of the claim and identity of the Claimant is attested to by its Personal Manager's letter of February 11, 1957, to the General Chairman, in which he spoke of R. C. Dunn as the Claimant, did not even mention the Claim Clerk position and limited his objection to the Scope Rule interpretation.

The request for an interpretation of the Award is denied.

Referee Harold Weston, who sat with the Division, as a member, when Award No. 10070 was adopted, also participated with the Division in making this interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 17th day of July 1962.