Award No. 10798

Docket No. CL-10837

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Harold Kramer, Referee

PARTIES TO DISPUTE:

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

CENTRAL OF GEORGIA RAILWAY COMPANY

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

(1) The Carrier has violated and continues to violate the Clerks' Agreement of December 1, 1956 by requiring or permitting Yardmasters, employes not covered by the Clerks' Agreement, to perform work of crew calling and crew dispatching in connection with handling Yardmasters Crew Board at Industry Yard Office, Atlanta, Georgia.

(2) Yard Clerks J. E. Green, C. J. Andrews, L. S. McLeroy, K. C. Blackmarr, W. R. Green, J. D. Fagan, A. L. Stanfield, G. H. Stanfield, on the first trick, and I. S. Walton, G. T. Morrison, H. C. Crumley on the second trick, and O. J. Baughan, H. H. Standridge, J. A. Rice, R. C. Fagan on the third trick and relief positions, shall now be compensated for one 3-hour call as per Rule 36(a) for each and every instance this violation has occurred retroactive to Monday, January 6, 1958.

EMPLOYES' STATEMENT OF FACTS: The Claimants are Clerks employed at Industry Yard (Atlanta, Georgia). They hold seniority on the Macon Division as outlined on Page 14 of the Agreement.

At the time this claim arose, in addition to the Claimants named, there were for the purpose of this claim four Yardmasters with assignments of 7:00 A. M. to 3:00 P. M.; 3:00 P. M. to 11:00 P. M.; and 11:00 P. M. to 7:00 A. M.; off one day each week and relieved by Relief Yardmasters at this point.

Under date of December 27, 1957 the General Chairman addressed a letter to Superintendent Terminals Mr. J. D. Wallis outlining therein the basis of this claim. This letter is self-explanatory and copy of same is hereto attached and identified as Exhibit No. 1. Also included with this letter was a compendium of Third Division Awards which briefly covered several excerpts from Awards 5785, 4790, 6141, 6444, 7129, 7168, 7474. These Awards being based on Scope Rule, same being similar to the Scope Rule in our current Agreement with Carrier.

In the case here under consideration, Carrier has shown that (1) no employe covered by the Clerks' Agreement has ever been assigned to or used to perform the work here in question; (2) that Yardmasters have always performed the work at Industry Yard which the Clerks now claim. In the light of the foregoing it is the position of the Carrier that the claim here presented to your Board is without basis, merit or justification, and should accordingly be denied.

Another thing is the absurdity of the large number of Claimants described in part (2) of the Statement of Claim. There are 8 Claimants listed on the first shift; three claimants listed on the second shift; and four claimants listed on the third shift. Even if the claim were valid, which Carrier emphatically denies, certainly no such penalty as the Employes here demand could be justified. We are only talking about a total of not more than 30 minutes work on each 8-hour shift. Part (2) of the Employes' Statement of Claim is obviously ridiculous on its fact.

CONCLUSION

The Carrier has established that

(1) This claim is a jurisdictional dispute involving a third party, and Carrier respectfully urges that all parties to the proceeding be notified and heard if justice is to be done to all involved.

(2) The effective Clerks' Agreement does not support the Employes. The Claimants, nor other employes covered by the Clerks' Agreement, have never in the history of this railroad performed the work involved in this dispute at Industry Yard (Atlanta, Ga.).

(3) One has to have something before he can lose it, and the Clerks have failed to show where they have ever performed the work in point. The Claimants have lost absolutely nothing.

(4) Part (2) of the Statement of Claim is absurd on its face. By no stretch of the imagination could this comparatively large number of clerks perform the few minutes work per shift. It would be like a dozen people trying to tie the strings on one shoe.

(5) The awards of the National Railroad Adjustment Board clearly support the Carrier.

Therefore, the Carrier respectfully submits that your Honorable Board should deny the claim of the Employes in its entirety.

All data contained herein have been presented to the employes involved or to their duly authorized representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: The conflict evidenced in the ex parte submissions regarding the amount of time consumed by crew calling during an eight hour period is not germaine to the basic issue. Also, we note that the record indicates that, through their proper representative, the Railroad Yardmasters of America were afforded an opportunity to be heard pursuant to Section 3, First (j) of the Railway Labor Act.

The crux of this matter is the contention by the Organization that under the Clerks Agreement effective December 1, 1956 that crew calling and dispatching is contained in the Scope Rule in paragraph (g) that specific reference

is made to work as "train and engine crew callers" and "crew and engine dispatchers."

In addition under Rule 2—Classification of Work it provided.

> "(a) Employes who regularly devote not less than four (4) hours per day to the compiling . . . incident to keeping Company records and accounts . . . shall be considered clerical employes within the meaning of this schedule."

and

> "(b) The above definition shall also be construed to apply to . . . train and engine crew callers, crew and engine dispatchers . . . and those performing similar work."

On the above matter which has come before the Board on a number of occasions, the Board had held, and we concur, that the mere listing of "crew calling" and "crew and engine dispatchers" in the Clerks Agreement does not thereby give the Clerks exclusive rights to this work. Award 2326, 5404, 9821 and others.

The wording of Rule 1 Scope in the current Agreement of December 1, 1956 is exactly the same as contained in the Scope Rule in the immediately preceeding Agreement between the parties and effective as of September 1, 1944. It cannot therefore be reasonably argued by the Organization that we are now faced with an altered situation as it pertains to the Scope Rule.

This Board holds with the opinion expressed in Award 4791 "that the readoption of the rule, in the instant Agreement as in earlier Agreements was not intended to change the meaning previously given to it."

The record in this instant supports the contention of the Carrier, the Clerks have never performed the work of crew calling and crew dispatching at Industry Yard, Atlanta, Georgia nor is this fact in dispute by the Organization.

It follows that the claim of the Organization in this instant must be denied.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of September, 1962.