

Award No. 11106

Docket No. CL-10180

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Raymond E. McGrath, Referee

PARTIES TO DISPUTE:

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

CENTRAL OF GEORGIA RAILWAY 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 and continues to violate the rules of the Clerks' Agreement, effective December 1, 1956, by permitting or requiring Yard Office Porter Walter Ages and Agency Office Porter Willie Smith to perform clerical duties as herein-after listed and that, therefore:

(2) This work shall be restored to the scope of the Clerks' Agreement of December 1, 1956 and assigned to employees covered thereby in accordance with the rules thereof, and that,

(3) Clerk H. E. Harvey shall now be paid for one (1) day's pay at pro rata rate of \$394.18 per month (plus cost of living adjustment, presently \$5.22 per month—subject to adjustment as provided in the Agreement of November 1, 1956) from May 1, 1957 until all of the clerical work now being performed by Walter Ages is assigned to Yard Clerks and that,

(4) Similarly, one (1) day's pay for and in behalf of Clerk J. V. Connally, Columbus, Georgia Freight Agency, rate \$367.46 per month (plus cost of living adjustment), presently \$5.22 per month, subject to adjustment as is provided in the Agreement of November 1, 1956 is claimed also effective May 1, 1957 and continuing thereafter until all of the above-mentioned messenger work presently being performed by Willie Smith is assigned to and restored to Clerks' performance in the Freight Agency and that,

(5) All other employees involved in or affected by said violation of the Agreement shall be compensated in full for any and all monetary losses resulting from Carrier's action retroactive to May 1, 1957.

Note: The Carrier's record shall be checked to determine the extent of the foregoing violation.

EMPLOYES' STATEMENT OF FACTS: In an informal discussion with Superintendent W. L. Ector on March 11, 1957, the System Committee called the attention of that officer to the fact that messenger and related clerical work was being performed by Walter Ages, Yard Office Porter, and Willie Smith, Freight Agency Porter to the extent outlined herein-after and requested that in order to avoid a time claim, Mr. Ector assign this work to the performance of Yard Clerks in the case of the work being performed by Walter Ages and to Freight Agency Clerks in the case of the similar work being performed by Porter Willie Smith. Mr. Ector promised to look into the matter but did nothing about same, and under date of July 1, 1957, the System Committee addressed a letter to Mr. Ector, fully outlining the details of this violation, together with compendium of Awards of excerpts therefrom and copies of these documents are self-explanatory and are hereto attached as Employees Exhibits No. 1 (a), 1 (b) and 1 (c), respectively.

On July 5, 1957, Mr. Ector wrote the General Chairman stating that he was not entirely clear on these claims and requested a conference and copy of Mr. Ector's letter, which is self-explanatory, is hereto attached and identified as Employees Exhibit No. 2.

Conference was held with Mr. Ector in his office at Columbus, Georgia on Tuesday, July 16, 1957, and results of that conference are set forth in minutes thereof, copy of which is hereto attached and identified as Employees' Exhibit No. 3.

The System Committee could not consistently accept Mr. Ector's decision, and therefore, duly appealed same to the Director of Personnel as is evidenced by our letter of July 22, 1957, copy of which is hereto attached and identified as Employees' Exhibit No. 4.

On July 24th, Mr. Collins promised to investigate the matter as is evidenced by his letter of July 24th to the General Chairman, copy of which is hereto attached and identified as Employees' Exhibit No. 5.

On August 21, 29 and 30, 1957, a considerable number of documents were discussed in conference with the Director of Personnel in his office at Savannah, Georgia, and this case was discussed as Docket CL 5854, File CL 1140, and pertinent portion of the minutes of the above-named conference is hereto attached and identified as Employees' Exhibit No. 6.

On October 3, 1957, the System Committee informed the Director of Personnel that his decision in the above docket could not be accepted and copy of this letter, which is self-explanatory, is hereto attached and identified as Employees' Exhibit No. 7.

The claim has been discussed informally several times since the conference of August 21, 29 and 30 and attempts have been made to resolve same, but all have been totally unavailing. Carrier has refused to properly assign the work of these two porters to clerks' performance as is clearly required by the Clerks' Agreement.

POSITION OF EMPLOYES: The following rules or portions thereof of the Clerks' Agreement of December 1, 1956 are applicable to the instant proceeding.

All data in support of Carrier's position has been presented to the employe representative.

(Exhibits not reproduced.)

OPINION OF BOARD: The sections of the Agreement germane to the issues in this case have been set out in full by both parties so that they will not be re-quoted in full here but referred to by rule number and sub-section or re-stated in part.

It is the position of the Employees that any position or work specifically shown in the Scope Rule, effective December 1, 1956, by Agreement between the parties, belongs to the Employees holding seniority under and covered by this Clerks' Agreement. It is their position that what transpired prior to December 1, 1956, is immaterial and from that date on all work mentioned in the Agreement comes under the Scope Rule of the Agreement and is properly clerks' work.

Stated another way the principal issue seems to be whether or not the Employees covered by and retaining seniority under the Clerks' Agreement effective December 1, 1956, have a right to the performance of the duties of messenger and related work which prior to December 1, 1956, were performed by Employees not covered by this Clerks' Agreement, i.e., Porters covered by and retaining seniority rights under the Agreement between the same two parties effective December 1, 1941, as amended.

The duties of Walter Ages and Willie Smith are set forth in several places in the record and they will not be repeated here.

The Carrier acknowledges that a portion of the duties of these Porters at Columbus did and do now involve "messenger" work that Porters, have performed these same duties for more than thirty years and that the Clerks' Agreement has been revised from time to time during this thirty year period with similar provisions as those relied on by the Claimant as set forth in the December 1, 1956, Agreement, but that this historical practice has never been changed.

The record discloses that Porter Ages spent four hours and forty-five minutes on cleaning and redcap duties per day and three hours and fifteen minutes on messenger duties—that is, carrying telegrams, letters, reports, etc. between offices at the Columbus terminal. The job of Porter Ages was abolished July 31, 1957. The record discloses that the duties of Porter Willie Smith who is still employed in such capacity, involve a daily total of six hours and fifty-five minutes of cleaning, thirty minutes of delivery of mail to and from the baggage room, and thirty-five minutes of distributing consists, waybills and telegrams.

The Carrier maintains that the basic issue presented in this case is simply whether or not "messenger work" continued by Porters Ages and Smith after May 1, 1957, were performed in contravention of the Clerks' 1956 Agreement.

The Brotherhood of Railway & Steamship Clerks, Freight Handlers, Express and Station Employees holds two separate contracts or Agreements on this property:

One is the Agreement effective December 1, 1941, as amended, and the Scope Rule reads as follows:

"Rule 1—Scope

"These rules shall govern the hours of service, rates of pay and working conditions of the following employees:

"Laborers employed in and around stations, storehouses and warehouses, including freight handlers, baggage and mail handlers office and station janitors and porters, red caps, elevator operators, maids, cleaners (other than in Mechanical or Roadway Departments), and those performing other similar work."

The other Agreement is effective December 1, 1956, as amended, and the Scope Rule reads, in part, as follows:

"RULE 1—SCOPE

"(a) These rules shall govern the hours of service and working conditions of the following classes of employees, subject to the exceptions noted below:

"(b) Clerks; machine operators, such as operators of typewriters, adding and calculating machines, bookkeeping, accounting, time-keeping and statistical machines, dictaphones, keypunch, teletype (except teletypes used exclusively in the transmission of messages and reports and located in offices which are equipped with telegraph facilities), and all other similar equipment used in the performance of clerical work or in lieu of clerical work; warehouse foreman; office boys; messengers; chore boys; checkers, baggage and parcel room clerks; train and engine crew callers, crew and engine dispatchers, office, station, storehouse, warehouse, dock, bridge and pier watchmen; telephone switchboard operators; and those performing similar work.

"(c) Positions or work within the scope of this agreement on effective date thereof belong to the employees covered thereby, and nothing in this agreement shall be construed to permit the removal of positions or work from the scope and operation of these rules except in the manner provided in Rule 59."

Another pertinent part of the Agreements between the parties is found at Rule 2 of the December 1, 1956, Agreement, which reads as follows:

"RULE 2—CLASSIFICATION OF WORK

"(a) Employees who regularly devote not less than four (4) hours per day to the compiling, writing and/or calculating incident to keeping Company records and accounts, transcribing and writing letters, bills, reports, statements and similar work, and to the operation of office mechanical equipment and devices in connection with such duties and work, shall be considered clerical employees within the meaning of this schedule.

"(b) The above definition shall also be construed to apply to warehouse foremen, office boys, messengers, chore boys, check-

ers, baggage and parcel room clerks, train and engine crew callers, crew and engine dispatchers, office, station, storehouse, warehouse, dock, bridge and pier watchmen, telephone switchboard operators, and those performing similar work."

In the case before us the Agreement itself uses the following phraseology:

"... Nothing in the Agreement shall be construed to permit the **removal of positions or work** from the scope and operation of these rules except in the manner provided in Rule 59."
(Emphasis ours.)

The many awards, cited by the Claimants, such as Awards 7129, 6357, 7349, 7438 and many others all refer to a general rule that reads similar to the statement found in Award 7478 by Referee Livingston Smith, to-wit:

"... And nothing in this agreement shall be construed to permit the removal of positions or work from the scope and operation of these rules except in the manner provided in Rule 73."

In the case before us, the Board concludes that the messenger work involved here has never been traditionally reserved to the Clerks' Organization. Less than four hours of the porter's day was spent doing messenger service. It does not appear that the work involved here has been "removed" from the Scope Rule of the Clerks' Agreement.

We do not think that upon the showing here the Claimants have established their right to the exclusive performance of the work involved. In support of this statement we wish to quote a few previous awards of this Board which we think are directly in point.

Award 10179 (Daly). Yard clerks alleged that non-clerks performed clerical duties:

"Before the organization can have any support for its position or establish that a violation of the Agreement occurred, it must first establish that the work in question had been assigned to Yard Clerks under the Agreement. This the organization has failed to do. Consequently, there is no merit to the organization's petition. . . ."

Award 8838 (McMahon)

"The Scope Rule before us is general in character, and sets out 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. Award 6284.

"We find that at Manly clerks have never performed the work complained of, although at other locations on Carrier's property the reverse is true. The record does not reveal any evidence that such work complained of was ever performed by clerks, and by the same token there is no showing in the record, nor does the Scope Rule provide that all clerical work is covered by the Agreement. It has consistently been held by this Division that the burden

of proof is upon the claimant and the organization to show beyond a reasonable doubt that the Carrier has violated the Agreement. * * *

"The record shows that no protest was ever made by the organization for a period of over thirty years as the handling of clerical work at this location and is conclusive under the awards of this Board that the established custom and practice of handling the work at Manly was never considered by the clerks as giving them the exclusive right to the work, which they had never performed.

"The work here involved is not exclusively that of clerks. Such can only be acquired by negotiation between the parties. This Board has no authority to make any change, by adding or detracting from the provisions of the rules as agreed to between the parties. The claims are without merit as applied to the provisions of the Agreement and shall be denied."
(Emphasis ours.)

Award 8831 (Daugherty)

* * * "(1) A Scope Rule that, like the one here involved, names positions or employes rather than work, duties, or operations must be held vague and ambiguous. Proper meaning and content can be given to such words only by positive evidence in respect to past practice and custom. (2) Such evidence should be specific instead of general. That is, it should be related not merely to the property as a whole but rather to the particular location or subdivision thereof where the dispute has arisen.

* * * "the instant claim cannot be sustained. **Past practice at the particular area here involved** does not support petitioner's interpretation of its Scope Rule." (Emphasis ours.)

We agree with the statement made in Award 8831 by Referee Daugherty as applied to this case, and that is that past practice at this particular area here involved does not support petitioner's interpretation of its Scope Rule.

In Award 2635, relied upon by the Claimants, the record disclosed that the basis for the decision was simply that the janitor put in the majority of his time on clerical work. The converse of this is true in our case. The porters put in relatively a small amount of their time on messenger or clerical work and this work was only a minor part of their work as porters. To further quote from Referee Shake's Award 2635 we find the following statement:

* * * "To hold that a janitor should be classified as a clerk merely because he incidentally performed some function that might, technically, be deemed of clerical character, would defeat the purpose of both Agreements with which we are concerned. * * *

We find that the Agreement has not been violated and that the claim should 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 Employees involved in this dispute are respectively Carrier and Employees 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 has not been violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 1st day of February 1963.