

Award No. 11621

Docket No. CL-11134

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

William H. Coburn, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES
NEW YORK CENTRAL RAILROAD (EASTERN DISTRICT,
BOSTON AND ALBANY DIVISION)**

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

(1) Carrier violated the rules of the Clerks' Agreement, when on October 22, 1957, it transferred the work of checking tracks at Zylonite, Cheshire and Farnum, Mass. from the scope of the Clerks' Agreement to the Agent at Adams, Mass., an employee not covered by the Clerks' Agreement, such action being unilateral on the part of carrier and without negotiation and agreement between the signatory parties to the Agreement, and

(2) That carrier shall be required to return the work to the scope of the Clerks' Agreement, and

(3) That Mr. L. P. Macksey Jr., shall be additionally compensated 2 hrs. pay at the pro rata rate of his position for each day the work is performed by persons not covered by the scope of the Clerks' Agreement, effective October 22, 1957, and continuing in effect until such time as the work is returned to the scope of the Clerks' Agreement, and

(4) That Mr. R. Boynton shall be additionally compensated 2 hrs. pay at the pro rata rate of his position for each day the work is performed by persons not covered by the scope of the Clerks' Agreement, effective Oct. 22, 1957, and continuing in effect thereafter until such time as the work is returned to the scope of the Clerks' Agreement, and that

(5) Mr. R. Boynton shall be allowed mileage for use of his automobile, based on the claim in item 4, which would have been paid to him, effective October 22, 1957, and continuing in effect until such time as the work is returned to the scope of the Clerks' Agreement.

EMPLOYES' STATEMENT OF FACTS: For over a year prior to October 22, 1957, the work of checking tracks at Zylonite, Cheshire and Farnum,

Award 8331 (Referee Johnson)

In denying this claim your Board said:

"Some contention is made that the Clerks' right to clerical work is exclusive wherever a Clerk is assigned. But the Agreement makes no such provision. On the contrary, the Scope Rule brings under the Agreement as Clerks only those employees whose positions involve not less than four hours per day of certain defined clerical work."

"* * * In any event the record does not show that any list man regularly devotes four hours or more per day to clerical work on the contrary, it shows that the work of a list man claimed to be clerical does not exceed three hours per day."

"It is contended that Carrier's action in assigning the hectograph work to Yard Clerks as of March 5, 1953, constitutes an admission that it belonged to them. It is unnecessary to consider the argument, since in any event the hectograph work did not exceed approximately an hour and a half on any trick, and therefore the hectograph work of any one position cannot have exceeded that amount.

"It is contended that the long-continued violation of an Agreement does not bar a remedy. But the question here is not of a violation, but of a practice existing prior to the Agreement and not terminated by it. Consequently, the argument is not pertinent."

CONCLUSION:

Carrier maintains that the basic issue in this dispute is one of jurisdiction, and that the claim should be dismissed by your Board because all parties with an interest in the disputed work have not been accorded an opportunity to protect their individual interests.

Carrier maintains further that this claim is without merit. There was no violation of any agreement rules or practice in reassigning this track-check work at Adams.

No employee was adversely affected by the rearrangement of work at Adams. In addition, past practice, custom and tradition, and awards of your Board, support Carrier's position and action in this dispute.

Carrier requests that if the claim is not dismissed for lack of jurisdiction, your Board deny it in its entirety for lack of merit or agreement support.

All data and arguments herein contained have been presented to the Clerks' Organization in conference and/or correspondence.

(Exhibits not reproduced.)

OPINION OF BOARD: The relevant facts are not in dispute. Prior to 1956 three one-man freight stations were operated at Farnum, Cheshire and Zylonite, Massachusetts. All work, including track-checking, at each location was performed by an Agent. In September, 1956, these stations were closed and the work formerly done there was thereafter performed by an Agent and three Clerks at the station at Adams, Massachusetts. The work of checking tracks at the aforesaid locations was performed by two of the Clerks (Claim-

ants) at Adams. The record shows that each devoted about two hours a day to this task, Monday through Friday. In October of 1957, and continuing thereafter, the Agent at Adams did the track-checking at the three locations.

No procedural or jurisdictional questions are before the Board for decision; the required notice to third parties having been given.

Petitioner's case appears to be based upon the premise that the work involved, once having been performed by employees covered by the Clerks' Agreement, may not thereafter be performed by employees of another craft under the following provision of the agreement:

"Positions or work within the scope of this agreement belong to the employees covered thereby and shall not be removed therefrom without negotiation and agreement between the parties signatory thereto."

The special rule relied on was intended to protect the rights of clerical employees to positions and work coming within the scope of the contract from removal therefrom unless negotiated and agreed to by the parties.

The difficulty with Petitioner's position is that the facts of this particular case do not establish that the work claimed to belong to the Clerks under the protective contractual provision ever fell within the scope rule of the Clerks' Agreement. Track-checking at the three locations before they were closed was performed not by clerks but by agents. Thereafter, the Agent at Adams delegated the track-checking work to Claimants until the Organization representing Agent-Telegraphers on this property objected. The work was then resumed by an employee of the craft which had originally performed it. Thus this dispute is clearly distinguishable on its facts from those where this Division properly has held, under either identical or closely similar rules, that all or part of the duties of a clerical position after it has been abolished may not be transferred to and performed by others. (Awards 5785, 7372, 8674, and 9416 are typical.) Here there was no transfer of clerical duties as a result of the abolishment of a clerical position. The agents' positions were abolished and their duties, including track-checking, were transferred to the Agent and Clerks at Adams. The fact that clerical employees then performed track checking work for a relatively brief period as an incidental part of their regular clerical duties does not, in and of itself, bar a resumption of that work by the craft which had a prior right to perform it. (Cf. Award 10644 — held, delegation of authority is revocable at will.)

The rule relied on is not applicable under the facts of record in this particular case. The claim, therefore, 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 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 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 19th day of July 1963.