

Award No. 11735
Docket No. CL-10834

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur Stark, Referee

PARTIES TO DISPUTE:

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

ILLINOIS CENTRAL RAILROAD COMPANY

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

(a) Carrier violated the Clerks' Agreement at East St. Louis, Illinois - St. Louis, Missouri, when on September 16, 1957, it permitted or required clerical work theretofore attached to clerical positions to be performed by employees of another Carrier not included within the Scope Rule of its Agreement with the Brotherhood, revised as of February 1, 1954.

(b) Clerk L. J. Schanuel, incumbent of position No. 12 and/or his successor, if there be any, be compensated three (3) hours' pay at penalty rate for each work day retroactive to September 16, 1957 and forward to date violation is corrected. (Pro rata rate of position \$19.82 per day.)

(c) Messenger D. Chinn, incumbent of position No. 65, be compensated two (2) hours' pay at penalty rate for each work day retroactive to September 16, 1957 and forward to October 5, 1957, both dates inclusive. (Pro rata rate of position \$15.01 per day.)

(d) Messenger R. Cronin, incumbent of position No. 59 and/or his successor, if there be any, be compensated two (2) hours' pay at penalty rate for each work day retroactive to October 7, 1957 and forward to date violation is corrected. (Pro rata rate of position \$15.01 per day.)

NOTE: Reparation to be determined by joint check of Carrier's payroll and other records.

EMPLOYEES' STATEMENT OF FACTS: There are employed at the Local Freight Agent's office, East St. Louis, Illinois, a force of clerical employees who perform the clerical work and messenger service incidental to the operation of the agency coming within the Scope of the Clerks' Agreement revised as of February 1, 1954.

All data in this submission have been presented to the Employees and made a part of the question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: At the outset each side charges the other with failure to comply with Article V, 1(a) of the August 21, 1954 National Agreement.

Carrier urges that the claim be denied without consideration of the merits since (1) Petitioner's original claim was submitted to the Superintendent rather than the Agent (the Carrier officer authorized to receive it); (2) Petitioner's original claim was invalid because it was for unnamed employees; and (3) As of date of original claim (September 10, 1957) nothing had occurred upon which a grievance could have been based.

These contentions are without merit, in our opinion. True, Petitioner's first communication (September 10, 1957) was addressed to Superintendent H. R. Koonce and signed by Division Chairman R. Uphoff. However, at the bottom of this letter appears the notation that a copy was being sent to Agent H. G. Keiser, along with this request (addressed to Keiser): "Please advise if you will allow claim as presented above if our work is farmed out." Carrier did not misunderstand. On September 18, 1957, Agent Keiser acknowledged receipt of Petitioner's "claim" and answered it by saying "your request is hereby declined." Petitioner's Chairman then appealed "over decision of Agent Keiser" to Superintendent Koonce. Thereafter, the case was processed without any protest by Carrier—until its initial submission to this Board.

With respect to Carrier's second charge, it should be noted that Petitioner, in its September 10, 1957 letter, alleged that Carrier was preparing to farm out work, which it described, and then named Messrs. Schanuel and Chinn (two of the three Claimants) as the "present employees performing these duties." On November 16, 1957 Petitioner added the name of Cronin and, thereafter, the case was processed on behalf of these three men. At no time—prior to its initial submission to this board—did Carrier object that it was unaware of Claimants' identities.

As for Carrier's third charge, it is true that Management's protested action did not become effective until September 16, a few days after receipt of Petitioner's letter. However, it is clear that both sides understood what the dispute was about, who was affected, and what the Organization desired. In fact, the September 10 letter specifically stated that if the work was farmed out on or about September 16 Carrier "may consider this as a continuous claim for all employees affected from that date on for all losses suffered." Thereafter, Carrier processed the claim and never objected, on the property, that it was premature or untimely. Not having raised such objection until its initial submission to this Board, Carrier waived its right to protest, in our judgment.

The Organization's charge, under Article V, 1(a), is that Superintendent Koonce, in his November 27, 1957 denial letter, failed to state "in writing . . . the reasons for such disallowance." It is true that the Superintendent's denial contained only a terse declination. But, significantly, no claim for payment under V 1(a) was contained in Organization's Statement of Claim which was submitted to this Board on July 28, 1958, nor was such claim made on the property. This is a new issue which cannot now be considered.

What, then, of the basic claim that Carrier, in September, 1957, arranged to have clerical work, coming within the Scope Rule, performed by employees of another Carrier, thus violating its Agreement with Petitioner? The relevant facts, briefly, are as follows:

For many years, prior to September, 1957, eighteen Carriers in the St. Louis-East St. Louis area, who handled shipments of members of the St. Louis Merchants Grain Exchange, sent representatives to the Exchange Building to sign bills of lading and diversion orders, to deliver arrival notices and to pick up weight certificates. The Illinois Central had one of its clerks (Claimant Schanuel) from the Freight Agents' office spend about 60 to 90 minutes a day (five days a week) on the Exchange Trading Floor, during which time he represented Carrier's Agent in signing bills of lading and the like. He then brought back these documents to Carrier's office located about a mile away. (Schanuel also made a daily bank deposit for Carrier.) Additionally, a Messenger (Claimant Chinn) made a daily trip between the Freight office and the Exchange, carrying grain arrival notices for the grain dealers, and returning with weight certificates and transit authorities which he picked up at three bureaus located in the Exchange Building. This chore required about 30 minutes a day.

On September 16, 1957 the Merchants Exchange moved to a new location about seven miles away. It advised all Carriers that (1) At the new place of business there would be only one desk and space available for one or two Carrier representatives for signing documents; (2) Individual railroads would no longer be permitted to send representatives to the Exchange Floor, since it interfered with operations. Accordingly, the Carriers agreed among themselves to have the joint Terminal Railroad Association Agent handle all Exchange transactions. TRA, in turn, arranged to deliver documents from the Exchange to its station (about six blocks from the former location) where each Carrier would have them picked up.

Thereafter, Carrier eliminated or changed certain duties previously assigned Schanuel and Chinn. Schanuel no longer was required to sign bills of lading or the like; this task became the duty of a TRA Auditor. Chinn, instead of traveling to the Exchange Building, delivered grain arrival notices to the TRA station where they were picked up by a TRA Messenger and brought to individual consignees at the new Exchange Building. Conversely, the TRA Messenger brought bills of lading, diversion orders and the like to the Station where Chinn picked them up.

Later (in October, 1957) Chinn's Messenger position was abolished and the Messenger work described above transferred to another Messenger Claimant Cronin. Also, Schanuel's bank deposit task was discontinued, and this function handled through the U.S. Mail.

Petitioner alleges that Management did not have the right to transfer Schanuel's document-signing duties to TRA or to let a TRA Messenger convey documents from the Exchange's new location to a central pick-up point. Moreover, Petitioner asserts, Chinn's Messenger position was abolished as a result of the reassignment of certain of his duties. Its detailed arguments are set forth in the Submissions.

After carefully reviewing the facts, arguments and numerous cited precedents, it is our conclusion that these claims are unfounded or unsupported.

With respect to abolishment of a Messenger position, it is unreasonable to believe that the rearrangement of Chinn's thirty-minute pick up and delivery assignment resulted in the elimination of a job. It would require much more than an assertion to demonstrate the validity of this contention. (The record shows, moreover, that the October, 1957 consolidation of three Motor Messenger positions into two such jobs followed the elimination of certain relief work by one Messenger, a reappraisal of service requirements, as well as the rearranging of Exchange service.)

What of Schanuel's chore? The task of signing the Agent's name, in our opinion, is not one which belongs exclusively to the Clerks, despite the fact that a Clerk was given this assignment for a considerable time. The Scope Rule, of course, is silent with respect to work; it provides only (as far as this case is concerned) that clerks and messengers are covered. But it is the Agent's responsibility to sign bills of lading and diversion orders, not the Clerk's. In this (as in other) areas, the Agent may delegate his authority to various persons. The act of delegation, however, does not create exclusive rights in the person affected. The delegation may be withdrawn or given to another. The evidence here, for example, shows that on this property bills of lading have been signed by conductors, traffic representatives, team track clerks and others, all acting on behalf of the Agent. Moreover, in the past, contractors have assumed the burden of accepting LCL shipments on behalf of the Carrier and acting as Agent in signing bills of lading. Board Awards 10644, 7784, 7031, while not identical in their fact situations, are in point, rather than Awards 6712, 6373, 4161 and the like which hold (correctly) that third parties cannot set aside application of a collective bargaining Agreement.

We come now to the Messenger. It is apparent from the record that it is the grain dealers' responsibility to furnish Carrier with weight certificates and to pick up arrival notices. As a convenience, however, this Carrier (and others) picked up these documents for the shippers. It cannot be reasonably held, in our estimation, that performance by a Messenger of a gratuitous service for shippers constitutes that type of work which the Agreement requires should be assigned exclusively to Messengers. By the same token, then, rearrangement of that task (in this case by changing the place of pick-up and delivery and permitting others to help) cannot be deemed a violation of Messenger rights. (See Award No. 15, Special Board of Adjustment No. 166.) There is no evidence, certainly, that Carrier was motivated by the desire to diminish Agreement-covered work on Messenger work. Rather, at the instigation of the shippers, a new pick-up system was installed for use by all affected Carriers and all shippers.

Under all these circumstances the claims will 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

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of September 1963.