

Award No. 11755
Docket No. CL-11685

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Levi M. Hall, Referee

PARTIES TO DISPUTE:

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

**CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC
RAILROAD COMPANY**

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

1. The Carrier violated the Clerks' Rules Agreement when it assigned baggageman work at Elgin, Illinois, to the Telegraph Operator, who is an employe not covered thereby.
2. The Carrier shall now be required to compensate Employe W. R. Allen for five hours and twenty minutes (5'20") at the overtime rate of Baggageman Position No. 74 for Sunday, February 8, 1959.

EMPLOYES' STATEMENT OF FACTS: Claimant W. R. Allen is the regularly assigned occupant of Position No. 74, Baggageman, at Elgin, Illinois. His assigned hours are 12 Noon to 9 P. M. Friday through Tuesday with regularly assigned relief on Wednesday and Thursday.

The mail and baggage handling at Elgin, which includes the loading and unloading of corpses, is work performed exclusively by employes covered by the Clerks' Agreement during their regular assignments.

On Sunday, February 8, 1959, there was a corpse to be unloaded from Train No. 102 which arrived at Elgin about 10:30 A. M. In lieu of calling the regularly assigned baggageman to assist the Ticket Clerk in handling this work, the Agent assigned the Telegraph Operator, J. Reindl, to this work.

POSITION OF EMPLOYES: There is an agreement between the parties bearing an effective date of September 1, 1949 from which the following rules are quoted in whole or in part.

clerks' agreement because, as has been conclusively shown, operators at Elgin have always loaded and/or unloaded corpses.

However, as stated, the relief ticket clerk, who was on duty and under pay, actually unloaded the corpse which arrived on Train No. 102 at 10:27 A. M. on Sunday, February 8, 1959 in view of which and in view of the fact that the operators at Elgin have always loaded and/or unloaded corpses the Carrier submits that there occurred no violation of the clerks' agreement when the operator on duty assisted the relief ticket clerk in unloading the corpse, said assistance consuming only about 5 minutes' time on the part of the operator.

As the corpse was actually unloaded by the relief ticket clerk, who, as stated, was on duty and under pay, there is absolutely no basis for this claim and the Carrier respectfully requests that the claim be denied.

All data contained herein has been presented to the employes and made a part of the question here in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: The facts in this controversy are not in dispute. Claimant W. R. Allen is the incumbent of a 5 day assignment on Baggage Position No. 74, assigned hours 12 Noon to 9:00 P. M., Friday through Tuesday, at Elgin, Illinois, rest days Wednesday and Thursday, on which day he was relieved by a regular relief assignment. This is a 7 day position and during his regular tour of duty he is assigned to load and unload mail and baggage.

Sunday is a regular workday of the Claimant. On Sunday, February 8, 1959, a corpse arrived on Train No. 102 at Elgin at about 10:30 A. M. Claimant was not called before his regular assigned starting time to perform this work. The Agent assigned a Ticket Clerk, under the Clerks' Agreement, and assigned a Telegrapher-Operator, not under the agreement, to assist the Ticket Clerk in removing a corpse from the train and the corpse was removed.

It is the contention of the Claimant that the mail and baggage handling at Elgin, which includes the loading and unloading of corpses, is work regularly assigned to positions of baggagemen and is performed by them throughout their tours of duty; it is further contended that inasmuch as the loading and unloading of corpses is work regularly assigned to positions covered by the Clerks' Agreement throughout their workweek that when assistance was required for the handling of this work on February 8, 1959, Claimant should have been called in lieu of assigning it to the operator, who is covered by another agreement.

Following are rules of the agreement which Claimant contends are applicable:

"RULE 1 -- SCOPE

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

* * * * *

"Group 2 * * *

Mail, Baggage and Parcel Room employees
(Other than those in Groups 1 (a) and 1(b))

* * * * *

* * * * *

"(e) * * * Positions within the scope of this agreement belong to the employees covered thereby and nothing in this agreement shall be construed to permit the removal of positions from the application of these rules, except in the manner provided in Rule 57."

"RULE 32 -- OVERTIME

"(f) In working overtime before or after assigned hours or on one of the seven (7) holidays specified in Rule 35(b), (if such holiday falls within the employee's work week) the employee regularly assigned to position on which overtime is required will be utilized. It is understood that the word 'regularly' as contained in this Rule 32(f) means that the employee who occupies a position either temporarily or permanently at the time overtime work occurs will be used for the overtime work."

Carrier, however, maintains that the Scope Rule of the effective agreement is general in character and does not undertake to enumerate the functions therein, that the Claimant's right to the work, which he contends belonged exclusively to him, must be resolved from a consideration of tradition, historical practice and custom and that on that issue the burden of proof rests with the Claimant.

As evidence in support of the claim, Claimant attached letters, particularly one from Operator Reindl, who assisted in removing the corpse from the train in which he says

"My duties never consist of handling baggage and corpses. These are duties attached to regular baggageman, Monday through Sunday, seven days a week."

In rebutting the statement by Operator Reindl, Carrier asserts that no one is actually assigned to the specific duty of unloading a corpse as such, but that is not to say that Operator Reindl does not assist in the performance of such work and that employee Reindl has and does assist in loading and unloading of corpses. There is no denial of Carrier's statement. In addition to this, Carrier has produced evidence that for some years prior to 1959 the operators at Elgin have always handled mail and baggage, inclusive of loading and unloading corpses; further, Carrier has asserted that at hundreds of stations on this property the work of loading and unloading corpses is performed by Agents and Operators, and that this has been the practice in Elgin as well, not only when the baggageman was off duty, but when he was on duty.

The Scope Rule under the effective agreement with which we are concerned defines the coverage in terms of position and not in terms of work; consequently, the Claimant's right to the work he contends belongs to him exclusively must be resolved from a consideration of tradition, historical prac-

tice and custom and on that issue the burden of proof rests upon the Claimant.

See Award 6824, Shake; Award 8381, Vokoun; Award 10014, Weston; Award 10615, Sheridan; Award 10762, Russell; Award 11643, Dorsey. See also the following awards on this property. Awards 9219, 9220, Hornbeck; Award 9757, LaDriere; Award 9821, Larkin; Award 9971, Larkin; Award 10546, Daly.

Claimant has failed to sustain the burden of proving that the work here involved was exclusively reserved to the Clerks under the Agreement; the evidence before us in the record preponderates in favor of the Carrier.

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, 1984;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That there has been no violation of the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 27th day of September 1963.