

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 & ILLINOIS MIDLAND RAILWAY COMPANY

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

1. Carrier violated the current Clerks' Agreement effective February 1, 1938, revised and reprinted April 1, 1953, when it permitted an official of the carrier, F. B. Westenberg, Car Service Agent, to perform routine clerical work filing IBM cards in storage boxes on July 30, 1958.

2. That E. E. Albert, Secretary to Car Service Agent, be compensated two (2) hours, pro rata rate of his position (\$372.07 per month).

EMPLOYEES' STATEMENT OF FACTS: Effective November 4, 1957 car accounting was put on IBM machines. The information pertaining to wheel moves, interchange, receipts and deliveries, etc., being punched into cards which after sorting are used in preparing statements and reports such as per diem and various other listings. These cards are then filed in metal cabinets for later reference. When these drawers become filled, the cards are then transferred to file boxes for storage until expiration of the time limit for keeping such records issued by the Commerce Commission.

A few days prior to July 30, 1958 Mr. Westenberg, Car Service Agent, instructed Mr. Albert to transfer these cards from the metal cabinets to storage boxes in order that more space would be made available in the metal cabinets for future use. This was the first time since the new procedure became effective it was necessary to transfer cards from the metal cabinets to storage file boxes.

Mr. Albert began transferring cards a few days prior to July 30, 1958 and found the locking devices, holding the cards in place, were difficult to loosen to remove the cards. Claimant encountered the same difficulty in succeeding drawers. At this point Mr. Westenberg instructed claimant to stop transferring cards. This order was carried out. Claimant returned to his desk.

A denial of the claim is, therefore, respectfully requested.

All data in support of the carrier's position in connection with claims has been presented to the duly authorized representatives of the employe and is made a part of the particular question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: Effective in November, 1957, information contained in certain reports were punched into IBM cards. After the cards were punched, they were placed in new files, having a nine month capacity, in the Car Service Agent's office.

There are three positions in the Car Service Agent's office — the Car Service Agent (an official position), the Chief Clerk to the Car Service Agent and the Secretary to the Car Service Agent. The Chief Clerk and the Secretary regularly assisted the Car Service Agent in performing all of the functions of his office.

In July, 1958, nine months after the adoption of the IBM method, it became necessary to make room for current cards by boxing some of the cards to the basement for storage. The Car Service Agent, Westenberg, asked his secretary, the Claimant Albert, to remove some of the cards and place them in the storage boxes for storage. The Claimant encountered some difficulty with the file mechanism and exclaimed in the presence of Agent Westenberg that he was going to use a hammer on the next one, whereupon the Claimant was advised to discontinue the removal of the cards by Agent Westenberg who completed the work himself, consuming not in excess of two hours. The Claimant lost no time from his regular work and after the file mechanism had been repaired, he was ordered to resume the work of transferring the cards. Since the installation of the IBM System, this was the first time it had been necessary to perform this work.

Claimant contends that Carrier recognized the work of transferring the IBM cards from metal cabinets as clerical work when the Car Service Agent instructed his secretary, the Claimant, to perform the work a few days prior to July 30, 1958, and that when the Car Service Agent took over the work, the Scope Rule of the Agreement was violated. The following rule involved in this matter is hereafter quoted:

"(1) Clerks—

(a) Clerical workers

(b) Machine operators (such as typewriters, calculating machines, bookkeeping machines, dictaphones and other similar equipment).

"(2) Other office and station employes such as office boys, messengers, chore boys, gatemen, baggage and parcel room employes (other than clerks), crew callers, operators of certain office and station appliances and devices, telephone switchboard operators, elevator operators, and others performing analogous services.

* * * * *

"RULE 2

(a) Clerical Workers. — Employees who regularly devote not less than four (4) hours per day to the writing and calculating incident to keeping records and accounts, rendition of bills, reports, and statements, handling of correspondence, and similar work."

On the contrary, Carrier contends there has been no violation of the Scope or any other rule of the Agreement, that such rule did not grant to the employes exclusive rights to all clerical and incidental work, more particularly, under the circumstances here involved.

It is indisputable that effective November 4, 1957, on this property car accounting was put on IBM machines for the first time. Likewise, it is not disputed that this was the first time since the installation of the IBM System, it had become necessary to transfer cards from metal cabinets to storage boxes in order that more space would be made available in the metal cabinets.

By a number of awards of this Division, the principle has been firmly established that a general Scope Rule such as we have in the instant matter does not by its terms grant or reserve to the Clerks the right to perform a specific job. It is obvious that any exclusive rights which employes may have to work must be based upon the presumed intention of the parties and this presumed intention must be established by evidence of circumstances at the time the Agreement was negotiated and the conduct of the parties thereafter. The existence of a practice that supports a claimed exclusive right to given work is obviously the most essential element that such exclusive right exists; hence, the burden of proving the practice rests upon the Claimant.

The parties herein are in agreement that this dispute arose out of the occurrence of the first time the job in question was performed on the property. The IBM System of accounting had been adopted only eight months before this incident which was five years after the effective date of the Agreement, April 1, 1953. Certainly, there is no custom, past practice nor tradition which can be relied upon by the Claimant in attempting to show exclusive right to the work, as this was the first time this new work was to be performed. The Rule, itself, does not grant any such exclusive right.

See Award 8127 (Smith); Award 10164 (Gray); Award 10687 (Mitchell); Award 11453 (Coburn).

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 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 27th day of September 1963.