

Award No. 11988
Docket No. CL-11618

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Jim A. Rinehart, Referee

PARTIES TO DISPUTE:

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

**THE NEW YORK CENTRAL RAILROAD, EASTERN DISTRICT
(Except Boston and Albany Division)**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, New York Central Railroad, Eastern District (Except Boston Division):

1. That Carrier violated and continues to violate the Clerks' Agreement when, effective July 17, 1957, it required and continues to require Checkers at its Freight Transfer, Utica, N.Y., to sort freight and to load freight on trucks, work which properly belongs to Loaders or Callers, employees who are carried on Class 2 seniority roster.

2. That Carrier violated and continues to violate the Clerks' Agreement when, effective July 17, 1957, it required and continues to require Truckers at its Freight Transfer, Utica, N.Y., to sort freight and load freight on trucks, work which properly is that of Loaders or Callers, higher rated employees, and refuses to pay them the rate of pay applicable to Loaders or Callers.

3. That account Checkers being required to sort freight and load freight, Class 2 work which is that of a Caller or Loader, each of the following named Callers or Loaders be paid 2 hours' additional pay for each day, commencing July 17, 1957 to date such violation of the Agreement shall have been eliminated:

C. Seifert	J. Alberico
R. Garland	P. Cornacchio
F. Solete	F. Cardino
C. Francis	H. Gentile

F. Pazzola	L. Lazicki
A. Gianotti	C. Buttits
L. Pavese	S. Pytko
P. Fitzpatrick	E. Slirzowski
E. Jarocz	L. Capparelli
D. Stamps	F. Cortese
C. Gentile	A. Donato
J. Esselta	P. Caputa
C. DiCesare	E. Zabko
J. Haligowski	A. Rosi
S. Sardina	F. Matti
C. Pilawa	V. Zizzi
M. Pytko	J. Zizzi
S. Barnes	F. Zito
T. Anfora	J. Swech
F. Mancusco	B. Mennan
S. Brutto	D. Muto
L. Micardi	H. Cleveland
F. Sassone	C. Lovecchio
J. Alberico	A. Peppenelli
C. Andes	L. Cardamone
F. Myers	S. Sobel
F. Spagnuolo	J. Cincona
J. Raspad	M. Semarar

4. That account of Truckers being required to sort and load freight, work which belongs to Callers or Loaders, higher rated employes, each of the following 54 Truckers be paid the difference between the rate of a Caller or Loader and that of a Trucker, for two hours on each day, commencing July 17, 1957 to date such refusal of Carrier to pay the proper rate of pay shall have been rescinded:

J. Korzski	W. Abernathy
B. Tomaino	J. Holmes
D. Moore	M. Uργο
A. DiGiorgia	A. Capelli
A. Zazzlanski	F. Bendino

C. Tomaino	A. Fontano
J. Haligowski	J. Moore
P. Moore	D. SantaMarie
D. Sloan	P. Buccino
F. Nalli	P. Ricci
J. Motyl	J. Alberico
S. Starzyk	B. Zizzi
M. Plass	F. Quinn
J. Simonette	J. Stanek
A. Giannotti	G. Natoli
J. Migolo	P. Mastrovito
C. Penzi	J. Convertino
A. Zaino	G. Greco
G. Caruco	R. Clark
H. Cooke	N. Caraway
F. Gigliotti	J. Suplicki
J. Pilawa	L. Zegarelli
I. Evangelista	J. Roddy
W. Evans	A. Gentile
P. Trepasso	S. Sardina
P. Karo	A. Donato
F. Sisti	S. Branch

5. That this being a continuing violation of the Clerks' Agreement, all employees not specifically named but who are adversely affected by the aforesaid violations shall be fully reimbursed. Due to the many and various changes in force brought about by changes in forces account filling of vacancies, temporary increases in force and for other reasons, final determination shall be made by a joint check of the payrolls and other records of the Carrier.

EMPLOYEES' STATEMENT OF FACTS: The Carrier has a Freight Station and Freight Transfer Station at Utica, N.Y., the Transfer Station having been located at Utica, N.Y. since 1935.

Prior to July 17, 1957 a gang consisted of one Checker, one Caller or Loader, two and sometimes three Truckers. On July 17, 1957 each gang was cut to three men, one Checker, one Caller or Loader and one Trucker.

Also, as of July 17, 1957, the Checker was instructed to assist the Caller or Loader in the sorting of freight and the loading of freight on trucks; the Caller or Loader was instructed to truck freight in addition to his usual

R. Clark has been furloughed.
N. Caraway is now working at Albany.
J. Suplicki has retired.
L. Zegarelli is now working at Syracuse.
J. Roddy has retired.
A. Gentile has retired.
S. Sardina is now working in the Baggage Room at Utica.
A. Donato has been furloughed.
S. Branch is now working at Albany.

CONCLUSION

The Carrier has shown that the present claim is without support in agreement rule and that your Board has denied similar claims. It is without merit and should be denied.

All data and evidence have been made known in conference or through correspondence.

(Exhibits not reproduced.)

OPINION OF BOARD: At the outset we are confronted with procedural questions. The Carrier says the claim has been substantially changed and amended and that it refers to unnamed Claimants. Petitioners say first defense was not made on the property. We have often held it is not necessary to name Claimants where they can be ascertained from Carrier's records. See Award 10515 - Dolnick. On the property the Carrier denied the claim on its merits and we hold that it should be decided on its merits here.

In order to sustain the claims presented it is necessary to find a violation of the effective agreement. The Scope Rule involved is a general one, enumerating the positions without specifying exactly what work or duties are reserved to the respective positions named. This Board has held that under such circumstances the burden of proving that the work involved was intended to be exclusively performed by Claimants, is on the Petitioners. This to be established by history, practice, custom or tradition of long standing. See Awards 11525 - Dolnick, 11128 - Boyd, 10931 - Miller, 10856 - McGrath, 11149 - Rose, 10903 - Ray. And that the practice is system wide. Award 10615 - Sheridan. Petitioners failed to sustain the burden of proof.

Furthermore it has been held by this Division that the facts that separate Seniority rosters are maintained for Class 1 and Class 2 employees is not sufficient to support the Petitioner's position or prevent the Carrier from allowing Checkers (Class 1) to sort and load, and thus do work of Callers (Class 2) or to prevent a trucker's position being abolished and the work distributed to Clerical employees. See Award 9047 - Weston, 7167 - Carter, 6140 - Whiting, 10384 - Dugan.

Petitioner's claim that truckers should be paid the Callers rate is not established. See Award 10906 - Moore, 11316 - Moore, 11129 - Boyd.

In view of the above cited awards we hold that there was no violation of any part of the Agreement.

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 13th day of December 1963.