Award No. 13012
Docket No. CL-13059

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Lee R. West, Referee

PARTIES TO DISPUTE:

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

MISSOURI PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5072) that:

1. Carrier violated Rules 1, 2, 5 and 25 of the current Clerks' Agreement when, beginning July 11, 1960, it transferred certain Class "B" messenger work from the St. Louis Terminals, Class "A" and "B" seniority district and roster, to the St. Louis Terminals Class "C" seniority district and roster.

2. The Carrier shall be required to compensate Messenger Hans Frost at the punitive rate as follows:

Claims for 30 minutes each date at punitive rate of $3.09 per hour for July 11, 12, 15, 18, 19 and 22, 1960, amount	$ 9.30
Claims for 2 hours each date at punitive rate of $3.09 per hour for July 13, 14, 20 and 21, 1960, amount	24.72
Total	$34.02

with claims continuing on the same basis for each work week, Monday through Friday, until the violation is corrected and the messenger work returned to employes on the St. Louis Terminal Class "A" and "B" seniority district and roster.

3. Carrier shall be required to return the work in dispute to employes on the St. Louis Terminal Class "A" and "B" seniority district and roster to be performed.

EMPLOYES' STATEMENT OF FACTS: Hans Frost, seniority date September 2, 1952 on the consolidated Class "A" and "B" clerical seniority roster of the St. Louis Terminal, west of the River, held a regular assignment of Auto Messenger, Class "B", rate $16.88 per day. It is a seven day per week position. His assigned hours were 8 A.M. to 4 P.M., with 20

Claimant not only performed no work on his rest days here involved, he was neither notified nor called to perform service.

It is quite evident from the foregoing that Rule 25 does not support the contention and claim of the Employes, and it is equally evident that there was no violation of the rule.

In the foregoing submission we have shown that:

(1) The work forming the basis for this claim has not been performed exclusively by either Class "A" or Class "B" positions.

(2) Porter Moore (Class "C") has been performing the work regularly since 1947, some fifteen years.

(3) The Employes have admitted that Porter Moore has been performing the work, and since he has been doing it over such a long period of time it seems obvious that it was with the knowledge and consent of the Employes.

(4) There is no basis for the claim here presented in favor of claimant for 30 minutes overtime on the several dates named, nor on any other dates that he was working and under pay when the work in question was performed.

(5) There is no basis for the claim here presented in favor of claimant for 2 hours at the punitive rate on his rest days.

(6) No duties have been taken away from Claimant nor any other messenger for the reason that at no time in the past several years has the work in question been performed by either claimant or an employe classified as a messenger.

In light of the foregoing, and as ruled by your Board in Award 8161 cited hereinabove, past practice fails to disclose that the work here involved has ever been performed exclusively by either Class "A" or Class "B" employes in view of which it cannot successfully be contended that it is work belonging exclusively to Class "A" and "B" employes. This being an indisputable fact the claim must, consistent with your Board's findings in Award 8161, be denied.

OPINION OF BOARD: J. R. Moore, Station Porter at Broadway Station, and his rest day relief, for a number of years have been required to go to the Ivory Yard Office to perform janitor work at about 11 A. M. each day. It is admitted that on his return to Broadway Station he would carry waybills or mail from Ivory Yard. On July 11, 1960, and thereafter, he was required to go to Ivory Yard at 8 A. M. and upon his subsequent return to Broadway Station, he was required to carry the waybills or mail.

The Brotherhood contends that requiring the porter, a Class "C" employe to do the work of a messenger, who is a Class "A" or "B" employe violates the Agreement between these parties. They point out that prior to June 15, 1960 this messenger work was regularly assigned to a Class "B" Messenger and that thereafter such messenger work was performed by Class "A" and "B" employes until June 29, 1960 when the Yard Clerk's position was abolished. They do admit that such messenger work was occasionally performed by porters after completing their janitor work, but contend that this was not a part of their "assignment" or was not an "assigned duty" until July 11, 1960. It is their contention that the assignment of such duties to a Class "C" employe violates the Scope Rule of the Agreement and Rule 2 which classifies employes. Their position is that messenger work is classi-

fied for Class "A" and "B" employes and cannot be assigned to Class "C" employes without violating the Agreement.

Carrier, on the other hand, points out that the Scope Rule is a general Scope Rule, merely listing the classes of employes rather than defining the work covered. They contend that under such a rule, Claimant must show that they performed the claimed work exclusively by the Claimant class of employes. They cite numerous awards, including Award 11755 — Hall to support this contention. It is also their contention that the classification rule (Rule 2) does not purport to reserve the exclusive right to perform work to classified employes, but is only a description of positions. They cite Award 12501 — Wolf, which states:

> "The mere inclusion of a classification rule does not, by itself, mean that the work of each classification will be restricted to the employes of the class."

With regard to the necessity of proving Claimant's exclusive right to this work, we are compelled to agree with Referee Yagoda wherein he stated in Award 12353:

> "We must however, put upon the Petitioner the necessity for establishing whether or not there was a substantial history of exclusive use of the messenger for such Sunday trips so as to conform the events to the criteria of conventional, customary and exclusive practice. . . ."

When we examine the facts of this case in the light of the above requirements, we find that Claimant has clearly failed to meet the burden of proving that Class "A" and "B" employes have performed the work involved exclusively. On the contrary, the proof is that Class "C" employes have performed such service over a prolonged period. The fact that it is now performed at 8 A. M. rather than at 11 A. M. does not appear to be a significant or valid distinction to draw.

For these reasons the claim 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 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 was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Board of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 27th day of October 1964.