

Award No. 13194
Docket No. CL-12988

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

William H. Coburn, Referee

PARTIES TO DISPUTE:

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

**THE CHESAPEAKE AND OHIO RAILWAY COMPANY
(CHESAPEAKE DISTRICT)**

**Statement of Claim: Claim of the System Committee of the Brotherhood
(GL-5063):**

(a) That the Carrier violated and continues to violate the terms of the General Agreement governing the hours of service and working conditions of all that class of clerical, office, station, and stores employees when, in the Stores Department at its Raceland, Kentucky Car shops, it failed and refused to apply the terms of the General Agreement at the time and since, it established four (4) positions, the occupants of which operate locomotive cranes to handle and distribute materials and supplies in and around the storehouses, warehouses, etc., and

(b) That the Carrier classify, rate, advertise and assign a sufficient number of positions to perform the work needed in the operation.

EMPLOYEES' STATEMENT OF FACTS: 1. From 1922 to 1936 Clerks in the employ of the Carrier were represented by a "Clerks' Association" or Company Union. Stores employees, other than Clerks, were not represented by any collective bargaining agent. Under date of January 18, 1936, under its Case R-217, the National Mediation Board issued revised certification reading in part as follows:

"On the basis of the investigation and check of authorizations aforesaid, the National Mediation Board hereby certifies that the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees has been duly designated and authorized to represent, for the purposes of the Railway Labor Act, all of the clerical class of employees of Chesapeake and Ohio Railway Company, including laborers in and around stations, storehouses and warehouses (including merchandise pier), telephone switchboard operators, elevator operators, janitors and cleaners, office and station porters, and other employees performing analogous service."

the Shop Crafts Agreement in accordance with the rules and practice of both the Shop Crafts Agreement and the Clerical Agreement since Raceland Car Shops and Raceland Stores were placed in operation October 16, 1929.

2. This case seeks transfer of such work from the Shop Crafts Agreement to the Clerical Agreement.

3. There has been no violation of the Clerical Agreement and the claim should be denied in its entirety.

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(Exhibits not reproduced).

OPINION OF BOARD: Notice of the pendency of this dispute before the Third Division was served on the Brotherhood Railway Carmen of America in accordance with the provisions of Section 3, First, (j), of the Railway Labor Act. That labor organization declined to participate herein. The Board may now, therefore, properly proceed to the consideration of this claim on its merits.

The evidence establishes that on this property the work of operating both on-track and off-track self-propelled cranes has been performed by members of the Carmen craft or class of employees, covered by the Shop Crafts' Agreement, since 1929.

It is the position of the Employees, however, that the work of operating the four cranes used to deliver and move materials in the Car Shops has belonged to employees covered by the Clerks' Agreement since the effective date of Agreement No. 7, January 1, 1945, which among other things, lists "* * * locomotive crane engineers (Stores Department)" as within Group 2 of the Scope Rule (Rule 1) of the basic Agreement.

On the undisputed facts of this record, the foregoing contention of the Employees is untenable. It is now too well established to require citation of authority that where, as here, a Scope Rule lists positions but does not describe the job content or duties thereof, those covered thereby who assert an exclusive right to perform the work of those positions, must show by a preponderance of credible evidence that traditional custom and practice establish such right. Here the uncontroverted evidence establishes that the work claimed has never been performed by covered clerical employees, but has been assigned to and exclusively performed by others on this property since 1929.

To comply with the request of the Employees in this case by sustaining the claim, the Board would, in effect, order the removal of work from the coverage of one agreement and place it under another. That we are without power or authority to do so is clear.

In view of the foregoing, the Board finds no merit in this claim. It will, therefore, be denied.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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 18th day of December 1964.