

Award No. 13823
Docket No. CL-14406

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John H. Dorsey, Referee

PARTIES TO DISPUTE:

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

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the system committee of the Brotherhood (GL-5420) that:

1. The Carrier violated Rules of the Clerks' Agreement commencing Saturday, Sunday and Monday, September 1, 2 and 3, 1962, when it failed to properly apply the provisions of the current work rules agreement in assigning the work necessary on the unassigned days of Freight House Foreman, Job No. 1125, at Albia, Iowa.

2. That the occupant of the Freight House Foreman position, C. I. Carpenter and/or his successor at Albia, Iowa, be allowed an additional day's pay (\$19.66) at time and one-half rate as wage loss for each Saturday and Sunday, beginning September 1 and 2, 1962 and each unassigned rest day thereafter that the work of his position is performed by employees outside the Scope of our Rules Agreement.

3. That the claimant be allowed a day's pay (\$19.66) at the holiday rate, of time and one-half, for wage loss for September 3, 1962, (Labor Day) and for each succeeding holiday that the position is filled by employees outside the Scope of our Rules Agreement.

EMPLOYEES' STATEMENT OF FACTS: For many years the head end work on passenger trains No. 7, 11 and 12 has been performed seven days per week by the Freight House Foreman without help from the Operators, except occasionally when the work on Train No. 11 was unusually heavy or the train was late from its scheduled arrival at 4:00 P. M. the Operator would assist the Freight House Foreman on No. 11 to prevent delay to the train.

The rest days of the claimant's position, Saturday and Sunday, have not been made a part of a relief assignment.

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 practice 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 — Hornbeck; Award 9757 — LaDriere; Award 9821 — Larkin; Award 9971 — Larkin; Award 10546 — Daly."

Reference to Rule 4 — (Seniority Datum) and Rule 8 — (Exercise of Seniority) simply have no bearing on this case as can be ascertained by merely noting the title references to these rules. No clerks' seniority was disturbed in any way by the change made at Albia, and neither did this change in the handling of the work create any reason for an exercise of seniority. The same employes continued to be employed at Albia after the change was made as were employed immediately prior thereto.

If for some completely unknown reason the Board feels that Clerks should be used to handle mail at Albia on the first shift on Saturday and Sunday, then they must find that it could be done on a call basis under Rule 44 and that the employe on the extra list at Albia, if available, would stand for the work rather than the claimant.

The Carrier summarizes its case as follows:

1. The practice is well-established on this property, and cannot be refuted by the Petitioner, that both telegraphers and clerks are used to handle head-end work on passenger trains.
2. Nothing in Scope Rule 1 gives exclusive right to the Clerks' craft to handle head-end work. Also Article VIII of the National Agreement of August 21, 1954, is applicable on this property and specifically gives Carrier the right to assign clerical duties to telegraph service employes.
3. Settlements on the property and Adjustment Board awards conclusively support the Carrier's contentions.
4. Even if there was any merit to the claim, which the Carrier vehemently denies, the payment demanded is exorbitant and unreasonable. The most that could be supported under any circumstances is two calls per day rather than the day's pay at time and one-half rate, and then only to Claimant on days there was no clerk available to do the work from the extra list at Albia.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant is Freight House Foreman at Albia, Iowa. The Claim alleges that "head end" work at Albia: (1) was and is work belonging to Clerks; and (2) from September 1, 1962, the work was performed at Albia, on Claimant's rest days, by the Operator, in violation of Clerks' Agreement.

It is uncontroverted that: (1) Claimant, during his shift, at Albia, had performed the "head end" work for a period prior to September 1, 1962; and (2) on the other two shifts at the same location Operators and Baggage-men, jointly, performed "head end" work. Further, Clerks' do not deny that "head end" work at other stations on Carrier's system has been performed, historically and customarily, by Clerks and/or Operators.

The Scope Rule of the Agreement is general in nature. Consequently, to prevail, Clerks have the burden of proving that the work, to which it lays claim, has been performed historically and customarily by employes covered by Clerks' Agreement. Clerks, in the record, failed to satisfy the burden. We will deny the Claim.

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 Carrier did not violate 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 6th day of August 1965.