

**Award No. 14065**  
**Docket No. CL-15293**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**Murray M. Rohman, Referee**

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**PARTIES TO DISPUTE:**

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

**CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC  
RAILROAD COMPANY**

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood (GL-5697) that:

1. Carrier violated the Clerks' Rules Agreement at Sioux City, Iowa when it permitted and continues to permit an employe not covered by the scope and application of that Agreement to perform work covered thereby.

2. Carrier shall now be required to compensate employe B. C. Bell, at the pro rata rate of Yard Clerk Position No. 6471 for one hour on each of the following dates:

February 24, 25, 26, 27 and 28, 1964

March 2, 3, 4, 5 and 6, 1964.

**EMPLOYEES' STATEMENT OF FACTS:** Employe B. C. Bell is the regularly assigned occupant of Yard Clerk Position No. 6471 at Sioux City, Iowa. His hours of service are from 2:00 P. M. to 11:00 P. M., Monday through Friday, with rest days of Saturday and Sunday.

Messenger service between the East and West Yards is one of the principal duties assigned to Yard Clerk Position No. 6471 by bulletin and is a duty assigned to and performed by clerical employes throughout the years. See Employees' Exhibits A, B, C, D and E, attached.

On the dates specified in Item 2 of the Statement of Claim, messenger service between the East and West Yards at Sioux City was performed by Yardmaster W. W. Preston, an employe outside the scope and application of the Clerks' Agreement.

Timeslips filed by employe B. C. Bell were declined by Superintendent L. H. Walleen in his letter dated March 17, 1964, copy of which is submitted as Employees' Exhibit F.

Division has repeatedly held that the burden is on the claimant to show by competent and substantial evidence that duties belonging to yardmasters are being performed by employees outside the scope of the Agreement. The Petitioner has failed to sustain this burden and the claim will be denied."

It is the Carrier's position that the employees have failed to meet the burden of proof feature in the instant case in view of which the instant claim must be dismissed in its entirety.

The Carrier submits that it is readily apparent that by the claim which they have presented the employees are attempting to secure through the medium of a Board Award in the instant case something which they do not now have under the rules and in this regard we would point out that it has been conclusively held that your Board is not empowered to write new rules or to write new provisions into existing rules.

It is the Carrier's position that there is absolutely no basis for the instant claim as it is in no way supported by past practice, schedule rules or agreements and we respectfully request, therefore, that the claim be denied.

(Exhibits not reproduced.)

**OPINION OF BOARD:** The Claimant is the regularly assigned occupant of Yard Clerk Position No. 6471 at Sioux City, Iowa. The instant dispute arose between the parties by virtue of the fact that the Yardmaster performed "messenger service between the East and West Yards" at Sioux City, on the various dates set forth in the claim. Furthermore, the Carrier conceded that the Yardmaster was not an employee included within the scope and application of the Clerks' Agreement.

This is a companion case to Award No. 14064, wherein this Board considered the diverse arguments raised by the parties and denied the Organization's claim. For that reason, it would be pointless to discuss the various issues anew. Suffice it to say, that we reiterate our position stated therein, incorporating by reference herein the conclusions reached.

However, there is one further argument advanced by the Organization in this claim, which was not as evident in the previous award.

The Organization submits that the Yard Clerk's job in the instant claim, through a series of Bulletins, specifically contained the following principal duty, among others:

" . . . Tour of duty to commence at East Yard and perform messenger service between East and West Yard."

At first blush, this would appear to be a persuasive argument in favor of the Organization's position and dispositive of the issue. However, on further analysis, this premise too, must fall by the wayside. In the face of previously established precedents involving the same parties and rule in issue herein, we are constrained to deny the Organization's claim.

In Award 12047, this Board discussed the effect of the bulletin and concluded as follows:

" . . . Claimant relies upon the bulletin as proof that this work is reserved to him exclusively. The purpose of the bulletin is to ad-

vertise the position. Although it lists 'expensing and billing' as one of the principal duties in the position, it does not expressly provide that this work is reserved to this employe exclusively . . ."

Similarly, in Award 13195, we stated that:

" \* \* \* A job bulletin is merely an advertisement and not in the legal sense, an offer, the timely acceptance of which would constitute a binding contract. It cannot be employed to create, modify, or destroy legal relationships such as those embodied in the basic agreement between these parties. (Cf. Awards 10095 and 11923.) Accordingly, the Board finds of no force or effect the bulletin evidence offered to describe work giving rise to an exclusive contractual right."

In the instant claim there is an absence of specific language in the Scope Rule indicating an intent to assign the work in question exclusively to the clerical employes, plus a deficiency in the record unequivocally establishing that such work was exclusively reserved to the employes covered by this Agreement—through tradition, historical practice or custom.

It is our view, therefore, that on the basis of the entire record, we are required to reject 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 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 30th day of December 1965.