

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Levi M. Hall, Referee

PARTIES TO DISPUTE:

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

SOO LINE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5624) that:

(1) Carrier violated and continues to violate the Rules of the Clerks' Agreement at Gladstone, Michigan, when effective April 5, 1963, it assigned janitorial work to Maintenance of Way employees, employees of another craft and class; and

(2) That furloughed Roster 2 employee, Andrew O. Nelson and/or his successor or successors, as the senior furloughed Roster 2 employee in Seniority District Number 29, be compensated for eight hours at the rate of Warehouseman for April 5, 1963, and on the same basis for each and every day and date thereafter that this violation continues until the Agreement violation is corrected; and

(3) That involved janitorial work be restored to the scope and operation of the Clerks' Agreement.

EMPLOYEES' STATEMENT OF FACT: There were in addition to other Clerks' assignments in existence at Carrier's Freight facility at Gladstone, Michigan, prior to February 22, 1963, two Warehousemen positions. Carrier abolished one Warehouseman position effective February 22, 1963, and assigned the duties of the abolished Warehouseman position to the remaining Warehouseman position. As result of the abolishment of the Warehouseman position occupied by claimant on February 22, 1963, the remaining Warehouseman position was burdened with such volume of work that some of the Janitorial duties formerly performed by the Warehousemen at Carrier's Office facility at Gladstone were left undone.

On May 24, 1963, Carrier further reduced the Clerical and Warehouse force at Gladstone by abolishing a Yard Clerk position and the one remaining Warehouseman position. Carrier created a combination Clerk-Warehouseman position to perform the work theretofore assigned to the two abolished positions. This reduction in force further reduced the time which the incumbent to the combination position was able to devote to janitorial service. The

portion of his total job content. The bulk of such janitorial duties was dispensed with, and what cleaning work that continued to be performed was done by the claimant on a call basis and others, incidental to their regular duties.

Carrier asserts that the abolishment of the transferman's position, the dispensing with daily sweeping, dusting, cleaning and the occasional performance of such work by others is consistent with past practice and Board awards, and is in no way violative of the Clerks' agreement. Carrier respectfully prays that this claim be denied accordingly.

OPINION OF BOARD: Carrier's facility in this dispute is a two story structure where all janitorial duties on both the first and second floor had been historically performed by employes under the Scope of the Clerks' Agreement. The remaining Clerk-Warehouseman still performs the janitorial duties on the first floor structure.

What occurred on the property in its chronological sequence is, as follows:

1. Prior to February 22, 1963, in addition to other clerk's assignments at Carrier's freight facility at Gladstone, Michigan, there were two Warehouseman positions.

2. On February 22, 1963 Carrier abolished one Warehouseman's position (Claimant Andrew Nelson's) effective February 22, 1963, and assigned the duties of the abolished Warehouseman position to the remaining Warehouseman position including janitorial duties at Carrier's office facility.

At the time of the abolishment of the second Warehouseman's position, the Agent, Emerson, informed the Roadmaster and Special Investigator who had offices on the second floor of the depot, that they would have to do their own cleaning.

What then followed according to Carrier's statement in the Record is:

"The remaining station forces tended to the tidying up of their premises as their feelings moved them. The roadmaster, by reason of his position, arranged for sectionmen to devote an hour to an hour and a half each Friday to the cleaning of his and the special investigator's office. Shortly thereafter, the agent began calling Claimant Nelson in every couple of weeks for a full day's work, cleaning, scrubbing and waxing the downstairs depot floors."

3. On May 24, 1963, the Carrier further reduced the Clerical and Warehouse force at Gladstone by abolishing a Yard Clerk position and the one remaining Warehouseman position. Carrier, at that time created a combination Clerk-Warehouseman position to perform the work theretofore assigned to the two abolished positions—this reduction in forces reduced the time which the combination position could devote to janitorial services, consequently janitorial work under the combination assignment was limited to the first floor.

The right of the Carrier to reduce and rearrange its forces is not at issue here.

The Scope Rule of the Clerk's Agreement is, as follows:

"RULE 1. SCOPE

These rules shall govern the hours of service and working conditions of all the following office, station, warehouse and storehouse employees, subject to exceptions noted:

* * * * *

GROUP 3.

Other Employees performing service in and around offices, stations, warehouses and storehouses such as

Warehousemen

* * *

Caretakers

Custodians

Janitors

* * *"

It is the contention of the Claimant that the work involved in this Claim has for many years at Gladstone been exclusively performed by Warehouse employees, coming within the Scope of the rule and working agreement; that by transferring this work to employees outside of the Clerks' Agreement, the Agreement is being violated.

Though, on the property, Carrier did not dispute the fact that the performance of janitorial work at Gladstone, Michigan, in Carrier's office building has historically been assigned and performed exclusively by employees' within the Clerks' Agreement, Carrier does take the position that janitorial work is not reserved exclusively to employees of this craft as such work is performed by members of other crafts at various other points on the property; Carrier further contends that because some janitorial work at locations other than Gladstone is performed by members of other crafts, that Carrier has a right to remove such work from the Scope of the Clerks' Agreement at Gladstone.

It cannot be denied that the great weight of precedent supports Carrier's position that the fact that the work at one point is assigned to one craft a long period of time at a station is not of controlling importance when it appears that such work was assigned to different crafts at different points within the Agreement on the question of whether or not work involved was the exclusive work of Clerks on the Carrier's property.

However, in the instant case, it was never denied on the property that this work was historically performed by employees (warehousemen) under the Clerks' Agreement for many years. (There was an attempted effort to establish in Carrier's rebuttal submission that this work had been done by members of other crafts outside the Clerks' Agreement. We cannot consider it here, as it was raised neither timely nor properly.) It is quite significant that in Carrier's initial denial of the Claim on the property, Agent Emerson stated that he had not assigned the work mentioned to any person or crafts but simply informed the Roadmaster and Special Investigator that they would have to do their own cleaning.

It was not until after an appeal was taken from the Agents declination of the claim that it was contended by the Carrier that the Roadmaster in assigning this work to Section laborers under his supervision was not in violation of the Agreement as that work was not exclusively reserved to employees' under the Clerks' Agreement.

It is, also, very significant that when it became necessary to have additional janitorial work on the facility that the Agent called Claimant, then a furloughed employe, to do this work, further recognizing that this work had been particularly regarded at Gladstone as the exclusive work of Warehousemen.

Under all the facts and circumstances of this case, we must conclude that it was mutually understood between the Carrier and the Organization that at least at this station, Gladstone, this work was reserved exclusively to Warehousemen under the Clerks' Agreement. See Award 12422, Coburn. It is intended, however, that the conclusion reached in this case is applicable only to the facts and circumstances of this particular case and is not to be considered in any respect as a precedent award.

It appearing from the record that section men were called in for work on Fridays of each week to perform janitorial work, as damages, Claimant is entitled to eight hours pay at the pro rate basis for each and every day the Section men were so employed in janitor work, and the Claimant was available, until such practice is discontinued.

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 has been violated.

AWARD

Claim allowed in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 12th day of January 1966.