

Award No. 14238
Docket No. CL-15422

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Herbert Schmertz, Referee

PARTIES TO DISPUTE:

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

TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5706) that:

(1) The Carrier violated the Clerks' Agreement when on February 3, 1964, it removed three hours' messenger work from the Janitor-Messenger position held by Tommie Johnson and assigned this messenger work to the Treasurer and Assistant Treasurer, both of whom occupy official positions.

(2) Janitor-Messenger Tommie Johnson shall now be paid three hours' overtime commencing February 3, 1964 and continuing each date at the rate of \$18.14 per day until the violation is corrected.

EMPLOYEES' STATEMENT OF FACTS: Tommie Johnson is the regular assigned janitor-messenger in the office of General Passenger and Ticket Agent. Three hours of his daily duties consist in performing messenger work for the Treasurer's office of the Terminal Railroad Association, such messenger work consists of making three daily trips from Union Station to the downtown banks with financial and legal documents. No cash or currency is handled on these trips.

Effective February 3, 1964, the messenger work was removed from this scheduled position and since that date has been performed by the Treasurer or Assistant Treasurer of the carrier (official positions).

Prior to 1932, the messenger work for the Treasurer's office was performed by a regular assigned messenger who also did messenger work for other general offices on the second and third floors of Union Station. In 1932, this messenger job was abolished and the messenger work for the Treasurer and Paymaster's office was transferred to the janitor-messenger job in the office of General Passenger and Ticket Agent until February 3, 1964, when by

In appealing Mr. Holloran's decision to General Superintendent Bailey the claim was amplified by your inclusion of the following sentence:

'The claim as filed covers the period from February 3, 1964 until the violation is corrected and said claim applies to Tommie Johnson and/or his successors.'

In the first place, I concur in Mr. Bailey's exception to the claim being expanded to include persons other than Tommie Johnson. Such claim is vague and indefinite and does not meet the requirements of the time limit on claims rule contained in the August 21, 1954 National Agreement.

With respect to the merits of the claim, the work in question, which had been performed by Tommie Johnson, attaches basically to the duties of Treasurer and/or Assistant Treasurer, who are officers of this company. In the same way that clerical work may be performed by an official or supervisor or, if the volume warrants, delegated to a clerk, so may work of the type in question be performed by the officer responsible or delegated to a clerk or messenger. When performed by a schedule employe, of course, your agreement requires that an employe covered thereby be used. At the present time the Treasurer or Assistant Treasurer is handling the bank deposits in conjunction with other financial transactions of the company. When Tommie Johnson was relieved of making the daily trips to the bank he simply reverted to the performance of a full day's janitor work. He suffered no monetary loss.

For all of the reasons explained it is my conclusion that there was no violation of the agreement and the claim is respectfully declined. Mr. Bailey's decision is therefore affirmed."

The wages and working conditions of the claimant in this dispute are covered by Schedule Agreement between the parties effective January 1, 1950, copy of which is on file with this Division of the National Railroad Adjustment Board.

OPINION OF BOARD: The issue in this case is whether the transfer of certain bank messenger duties, previously performed by the grievant, to the Company Treasurer constituted a contract violation.

The agreement between the parties contains a usual general type Scope Rule. In such circumstances this Board has held that such a rule standing alone does not grant any class or group the right to claim such work to the exclusion of all other groups, unless it can be shown to have always exclusively performed such work throughout the Carrier's entire system. In such cases the practice of exclusivity merges into the contract with the result that such work becomes reserved for those employes covered by the agreement.

The Organization on the property contended that the work in question had without exception always been performed by employes covered by the Clerks' Agreement. The Carrier on the property contended that the work was incidental to and a part of the Treasurer's duties, and had for these years been delegated by the Treasurer to the messenger. Now, says the Carrier, it has decided to end this delegation and have the Treasurer carry out the duties of his office. Such a decision, asserts the Carrier, may not be denied by any finding of work

reservation because work reservation only applies vis-a-vis other groups not to the performance of work belonging to Carrier's officers.

Within the context of the facts of this case we must disagree. While there may indeed be circumstances in which tasks are performed by covered employes upon a delegated basis and which subsequently may be transferred to the position from which it stemmed, we do not view the work in question to be in that category.

In the first place it would appear that this work was never previously performed by the Treasurer. Secondly, the nature of the work is routine transmittal of papers and documents. There is no need for any decision making, policy application or financial negotiation or even fiscal ability. It would appear that the only aspect to connect the work to the Treasurer is that the documents went to and from the bank. There was no suggestion that the transmittal had been performed in an inefficient manner. In summary, therefore, this work had all the characteristics of messenger work and should properly be performed by the covered employes. Its removal constituted a contract violation.

As to remedy, it is our view that since Mr. Johnson worked eight hours as a janitor it is possible that an addition of the messenger work would have made him eligible for a total of eleven hours work a day. While we can not say with absolute assurance that Mr. Johnson truly had a full eight hours of janitorial work, it is a fact that he was paid on that basis. In view of this it certainly would be impossible to conclude the opposite i.e., that only five hours of janitorial work existed. On balance, therefore, we find that Mr. Johnson must be presumed to have had a full day's janitorial work and that if the messenger work had been assigned to him he would have been assigned three hours' overtime.

Since this Board has held that to receive the overtime penalty rate the work must actually be performed, we hold that the three hours Mr. Johnson lost should be paid at his regular rate.

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 violated.

AWARD

Tommie Johnson should be paid three hours at his regular rate for each day beginning February 3, 1964 the day the violation occurred.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 11th day of March 1966.

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