



Award No. 15073
Docket No. CL-14115

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arnold Zack, Referee

PARTIES TO DISPUTE:

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

THE OGDEN UNION RAILWAY AND DEPOT COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5367) that:

(a) Carrier violated the current Clerks' Agreement when on January 1, 1962, it discontinued Janitor position 26-2, hours of assignment 7:00 A. M. to 3:30 P. M., Wednesday and Thursday rest days; Janitor position 26-4, hours of assignment 8:00 A. M. to 4:30 P. M., with Sunday and Monday rest days; Janitor position 26-3, hours of assignment 7:00 A. M. to 3:30 P. M., Friday and Saturday rest days; Relief position 24 which relieved position 26-4 on Sundays and Mondays; and Relief position 31 which relieved position 26-2 on Wednesday and Thursday and 26-3 on Friday and Saturday, as duly constituted 7 day assignments under Yard Office Reduction in Force Notice 15 dated December 26, 1961, and then re-established Janitor positions 26-2, 26-3 and 26-4 as five day positions with Saturday and Sunday rest days, when no corresponding reductions of janitorial duties existed.

(b) Carrier shall now make payment for January 13, 1962 to F. E. Sturdevant, G. Jackson, and Frank Smith at the rate of \$17.42 per day and to G. Jackson and Frank Smith for January 14, 1962, at the rate of \$17.42 per day and to the senior available extra or unassigned employee who does not otherwise have 40 hours of work, beginning January 20, 1962 and continuing each Saturday and Sunday the violation continues at the rate of \$17.42 per day. The senior extra or unassigned employee to be determined by a joint check of the Carrier's records.

(c) Carrier shall now be required to pay Elmer McFarland, regularly assigned Janitor, one day's pay at one and one-half times the regular rate of \$17.42 per day for January 14, 1962, and should a joint check of the Carrier's records fail to disclose an available extra or unassigned employee who does not otherwise have 40 hours per week in his work week, the Carrier shall be required to make payment at one and one-half times the Janitor's regular rate of \$17.42 per day to each regular assigned Janitor and/or their successors for

each Saturday and Sunday that no extra or unassigned employee is available so long as the violation continues.

(d) Carrier shall now be required to re-establish the Janitor positions to their former status of 7 day positions.

EMPLOYEES' STATEMENT OF FACTS: Under date of December 26, 1961 the Carrier issued Yard Office Reduction in Force Bulletin No. 15, discontinuing effective January 1, 1962, at 12:01 A.M. three (3) janitorial positions and two relief positions performing relief on the three janitorial positions. (See Employee's Exhibit No. 1)

At the same time Yard Office Bid Bulletin No. 76, dated December 26, 1961 advertised three (3) janitorial positions with rest days of Saturday and Sunday. No relief positions were bulletined to provide relief on the janitorial positions. This bulletin was to be effective January 1, 1962. (See Employee's Exhibit No. 2)

The result was that beginning January 1, 1962, Carrier's actions resulted in janitorial positions 26-2, 26-3 and 26-4 being changed from 7 day positions to 5 day positions although no corresponding reduction of janitorial duties existed.

The Carrier received complaints from other Organizations because of the lack of proper janitorial service on Saturday and Sundays. Carrier acknowledged the fact that there was no corresponding reduction in the janitorial requirements on the property when, on January 25, 1962 instructions were issued to yard clerks to perform janitorial service. (See Employee's Exhibit No. 3) This was further acknowledged in Mr. Bills letter to the General Chairman under date of February 26, 1962. (See Employee's Exhibit No. 6) Carrier further acknowledges the fact that no corresponding reduction in the requirements of janitorial service existed by its notice of April 4, 1962 (See Employee's Exhibit No 8) and in Carrier's rejection of claim dated April 4, 1962, file 013-25. (Employee's Exhibit No. 9) Carrier says it deemed that janitor work was needed on only 5 days per week and then contradicts itself by issuing instructions to Yard Clerks to perform janitorial work on the 6th and 7th days.

Claim was filed March 10, 1962, (Employee's Exhibit No. 7) and subsequently appealed (Employee's Exhibits 10 to 14) through proper channels up to the final officer of appeal, Mr. G. A. Cunningham. Claim was initially declined by Vice President Cunningham on July 18, 1962 (Employee's Exhibit No. 13) and declination re-affirmed August 6, 1962 following meeting of August 3, 1962. (See Employee's Exhibit No. 14) Time limits in which to submit this dispute to your Honorable Board were extended thirty (30) days by agreement. (Employee's Exhibit No. 15)

(Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS: The Carrier's operations at Ogden, Utah, comprise facilities of a large switching terminal employing a large number of workers of various crafts. There are varied locations throughout the terminal where employees are housed at facilities provided where they go on and off duty, and various office quarters where office work is performed. The operations are of such character that these facilities are generally used by employees working on shifts scheduled around the clock twenty-four hours per day and seven days per week.

The initial filing of the claim by the Organization's General Chairman was proscribed by the above statute of limitation. Under date of April 4, 1962, the Carrier's General Yardmaster declined the claim (Carrier's Exhibit B).

Under date of April 27, 1962, the Organization's General Chairman appealed the claim to the Carrier's Assistant to Superintendent (Carrier's Exhibit C).

Under date of May 11, 1962, the Carrier's Assistant to Superintendent declined the appeal (Carrier's Exhibit D).

On June 7, 1962, the Organization's General Chairman appealed the claim to the Carrier's Vice President, requesting conference discussion (Carrier's Exhibit E).

Under date of July 18, 1962, the Carrier's Vice President declined the claim and granted conference (Carrier's Exhibit F).

Conference discussion was held on August 3, 1962, and the Organization was advised in writing, under date August 6, confirming conference discussion (Carrier's Exhibit G).

The nine months' time limit for processing this case with the Third Division, NRAB, expired April 18, 1963, and the Organization requested a thirty-day extension under date of April 10, which was granted by the Carrier under date April 11, extended the time limit for filing until May 18, 1963.

(Exhibits not reproduced.)

OPINION OF BOARD: The instant case arose from the Carrier's action in assigning some janitorial duties to existing positions as part of their regular hours of assignment.

The Organization argues that the Carrier's action deprives employees classified as janitor of overtime work to which otherwise entitled and is thus a violation of Rule 10 of the parties' Agreement. Additionally it argues that Carrier is barred from adding additional duties under the terms of Rule 55 of the parties' Agreement.

The Carrier asserts that the assignment of the janitorial tasks was a valid managerial prerogative, particularly in light of the parties' General Scope Rule, and is not an improper deprivation of work for the janitors classification.

In Award 11988 (Rinehart) this Board held:

"... The Scope Rule involved is a general one, enumerating the positions without specifying exactly what work or duties are reserved to the respective positions named. This Board has held that under such circumstances the burden of proving that the work involved was intended to be exclusively performed by Claimants, is on the Petitioners. This to be established by history, practice, custom or tradition of long standing ..."

In the instant case, as in the cited precedent, Petitioners failed to sustain the burden of proof.

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 16th day of December 1966.