

Award No. 15695
Docket No. CL-16200

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**

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6008) that:

(1) Carrier violated the terms of the currently effective Agreement between the parties and continues to violate the Agreement when, beginning on or about April 10, 1965, it arbitrarily removed work covered by the Agreement and assigned by bulletin to and performed by employees covered by the Scope Rule thereof at Tulsa, Oklahoma and permitted it to be performed by outsiders, not covered by the Agreement in any manner and having no right to the performance of such work.

(2) Carrier shall now be required to allow the following claimants two (2) hours at the time and one-half rate on each date indicated below at the rate of their respective positions:

Claimant	Position	Dates
Paul Wallner	Caller	April 10, 11, 12, 13, 1965;
C. E. Bailey	Chief Caller	April 12, 19, 1965;
J. L. Reno	Caller	April 13, 14, 15, 19, 20, 21, 1965;
R. E. Bailey	Caller	April 15, 16, 17, 18, 19, 1965;
R. E. Bailey	Caller	April 21, 22, 24 (Pos. No. 52) 24 (Pos. No. 53) 25 (Pos. No. 52) 25 (Pos. No. 53), 1965;
D. L. Nicholson	Caller	April 12, 13, 14, 17, 18, 19, 20, 1965;
D. L. Nicholson	Caller	April 21, 22, 23, 24, 1965.

EMPLOYEES' STATEMENT OF FACTS: For many years, as evidenced by Employees' Exhibits 1(a) through 1(f), inclusive, the transporting of

train and engine crews at Tulsa, Oklahoma has been assigned exclusively by bulletin to, and performed by, Callers at that point. It will be noted particularly in this connection, that while the violation of the Clerical Agreement began on or about April 10, 1965, some 48 days thereafter, the Carrier was continuing to show on bulletins as one of the assigned duties of the Caller Position No. 53 (bulletined May 28, 1965, Employees' Exhibit 1(f)), "transporting crews in company automobile from yard office to various areas in and around terminal." This particular bulletin was issued, as stated above, some 48 days after the work had arbitrarily been removed from the Scope of the Agreement and given to outsiders, who hold no rights to the performance of clerical work and to the complete exclusion of the clerical employees covered by the Agreement, the work in question having for many years been assigned by bulletin to and exclusively performed by the Callers at Tulsa, Oklahoma.

These claims have been handled with Management up to and including the Director of Labor Relations, but not composed. See Employees' Exhibits 2(a) through 2(e), inclusive.

(Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS: On January 16 and March 30, 1965 the Carrier entered into Agreements with certain operating Brotherhoods providing and designating, among other things, the Bliss Hotel in Tulsa, Oklahoma as a place of "suitable lodging" for certain train service employees tying up at Tulsa. The Agreements also provide that the Carrier will furnish such employees with transportation or the difference between local bus fare and taxicab fare from the yard at that point to the Bliss Hotel, located in downtown Tulsa.

The claimant Organization takes the position that the use of such taxicabs violates the effective Agreement between the parties.

OPINION OF BOARD: Carrier entered into Agreements with certain of the operating Brotherhoods providing and designating, inter alia, the Bliss Hotel in Tulsa, Oklahoma, as a place of "suitable lodging" for certain train service employees tying up at Tulsa. The Agreements also provide that the Carrier would furnish such employees with transportation, or the difference between local bus fare and taxicab fare, from the yard to the Bliss Hotel. Petitioner claims the right to the work of transporting the crews.

The Scope Rule in the Clerks' Agreement is general in nature. Therefore, to prevail, Petitioner has the burden of proof that the work claimed has been traditionally and customarily performed on a system-wide basis by employees covered by its Agreement. See Award Nos. 14944 and 15394, involving the same parties and Agreement.

It is not disputed that one of the assigned bulletined duties of Claimants was "transporting crews in company automobile from yard office to various areas in and around terminal" at Tulsa. Petitioner states that they had performed such work exclusively. Carrier states they had not.

We have held that a bulletined duty, in and of itself, is not evidence of an exclusive reservation of work. Award 14944.

Petitioner has failed to adduce any evidence of probative value that Clerks had historically performed the work exclusively. It, therefore, has failed to satisfy its burden of proof. Consequently, we are compelled to dismiss 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 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 Claim must be dismissed for failure of proof.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of June 1967.

LABOR MEMBER'S DISSENT TO AWARD 15695, DOCKET CL-16200

To demand that that which is work only occurring at certain points on a system must be proved to have been performed exclusively on a system-wide basis by those who have historically performed it at those certain points where it became necessary is to demand too much.

Furthermore, it would seem that presenting Carrier's bulletins showing that particular work to have been continuously assigned only to employees under the Clerks' Agreement, when weighed against Carrier's unsupported denials, would still constitute the preponderance of evidence.

Such "tests" as have been promulgated by "neutrals" when applied to a case such as we had here simply make the onerous burden of proof quite impossible, for we were not concerned with points other than Tulsa, Oklahoma. Awards 14708 through 14714, as well as 15158, 14532, 14650, 14084, 12903, 12422, and others, including Awards 13236 and 13237, supported a sustaining decision in this case and I therefore dissent.

D. E. Watkins
Labor Member
7-7-67

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