



Award No. 16470
Docket No. CL-16678

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John J. McGovern, 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-6166) that:

(1) Carrier violated the terms of the currently effective agreement between the parties when beginning August 1, 1965, Carrier removed work from the Scope of the Clerks' Agreement and assigned it to others who hold no seniority or other rights under that Agreement.

(2) Carrier now be required to reimburse the four senior qualified extra clerks and any others adversely affected by the violation (to be determined by a check of the Carrier's payroll and other records) at the pro rata rate of Position 78, rate \$18.9024 per day; Positions 96 and 97, rates \$18.7624 per day and Relief Position No. 4, which embraces Positions 78, 96 and 97 on their rest days, beginning August 1, 1965 and continuing each day thereafter that the violation continues to exist.

EMPLOYEES' STATEMENT OF FACTS: On July 21, 1965, the Carrier's Superintendent Terminals at Memphis, Tenn., addressed the instructions next quoted below to All Clerks and All Yardmasters in the Memphis Terminal:

"Effective August 1, 1965, we will deliver waybills and interchange reports with cars to connecting lines via engine foremen.

When these procedures become effective, we will discontinue sending waybills and interchange reports via messenger."

Messenger service is available to the Carrier on an around-the-clock basis in the Terminal. Messenger Position No. 96 has assigned hours of 7:30 A. M. to 3:30 P. M. working Sunday through Thursday, rest days, Friday and Saturday; Messenger Position No. 97 has assigned hours of 3:30 P. M. to 11:30 P. M. working Tuesday through Saturday with rest days of Sunday and Monday; Messenger-Porter Position No. 78 has assigned hours of 11:30 P. M. to 7:30 A. M. and works Thursday through Monday with rest days of Tuesday and Wednesday, Relief Position No. 4 embraces the rest days of Positions 78, 96 and 97.

The work of picking up and delivering waybills and interchange to connecting lines has been exclusively, traditionally, customarily and historically assigned to Messengers in the Memphis Terminal for as long as there is any record (Employees' Exhibits 1(a) through 1(d) inclusive) until the Carrier issued the above quoted instructions on June 21, 1965 that effective August 1, 1965, the work would thereafter be performed by engine foremen, who have no seniority or other rights under the clerical agreement to the performance of work covered by the Scope Rule thereof.

The claims were 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: This Carrier interchanges cars with seven other railroads at Memphis, Tennessee. To improve efficiency and expedite the handling of traffic the Carrier inaugurated on August 1, 1965 an arrangement whereby the engine foremen would also handle the waybills and interchange reports for the cars delivered by them in interchange to connecting carriers.

The Petitioner contends that the performance of such work by engine foremen violates the Scope Rule of the effective Agreement, and hence this dispute.

OPINION OF BOARD: Under a new procedure initiated by Carrier on August 1, 1965, engine foremen were instructed to handle waybills and interchange reports for the cars delivered by them in interchange to connecting carriers. Although no positions have been abolished by this transfer of work from the messengers to the engine foremen, it is nevertheless contended by Petitioner that Carrier has violated the Scope Rule of the Agreement since messengers have "customarily, traditionally and historically" performed the function over a period of many years to the exclusion of others at this particular location, the Memphis Terminal.

From an examination of the record before us, it is clear that this dispute has also been submitted to the Disputes Committee by the employees alleging a "crossing of craft lines," which they maintain is in violation of Article III of their National Agreement. Although we take cognizance of this, it is quite apparent from other awards of this Board, that the question raised cannot properly be considered by us.

The sole question with which we are confronted is whether or not faced with a broad, general Scope Rule, it is sufficient for Petitioner to show that the work performed at a specific location, which has "customarily, historically and traditionally" been done by clerical employees at that specific location, to the exclusion of others, satisfies our general rule applicable to General Scope Rules. By this we mean to say, does this practice over a protracted period of time effectively amend the Scope Rule itself. Is it sufficient to show that this practice has been pursued persistently at a given location, thus demonstrating an acquiescence on the part of Carrier to such an extent that the Scope Rule has thus been altered? We think not. The awards of this Board has consistently held that the assignment of work at a specific location does not create exclusive rights to that work under a General Scope Rule. Such an assignment must be on a system-wide basis in order for us to issue a sustaining award in this case. (Award 12932.) We will deny 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 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 28th day of June 1968.