

NATIONAL RAILROAD ADJUSTMENT BOARD**THIRD DIVISION**

John H. Dorsey, Referee

PARTIES TO DISPUTE:**BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP
CLERKS, FREIGHT HANDLERS, EXPRESS AND
STATION EMPLOYES****DULUTH, MISSABE AND IRON RANGE RAILWAY COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6283) that:

(1) Carrier violated Rule 1, Scope, of the Clerks' Agreement, when on December 30, 1965, and February 7, 1966, the Carrier contracted janitorial work of this Craft and Class at the Superintendent's Office, Proctor, Minnesota, to an outside firm, whose employees are not subject to the Agreement.

(2) Claimant Theodore Skog shall now be paid one (1) day's pay at Janitor's rate, Superintendent's Office, for December 30, 1965, and Claimant R. W. Benson shall now be paid one (1) day's pay at the Janitor's rate, Superintendent's Office, for February 7, 1966.

EMPLOYES' STATEMENT OF FACTS: Carrier maintains office facilities for its Superintendent at Proctor, Minnesota, wherein the janitorial service is performed by a Carrier employe occupying a position coming within this Craft and Class. This position has historically and customarily been assigned to Seniority District No. 2 employes.

On the dates of claims, Carrier employed an outside firm to dry clean carpeting in the office of the Superintendent and the adjoining office of the Safety and Plant Protection Department. This cleaning was performed in the offices with the carpeting remaining in place on the floor.

The janitor, assigned to the janitorial position under the jurisdiction of this Craft and Class at that location in Seniority District No. 2, performs all other janitorial duties at that location. The outside firm dry cleaned the carpeting on the dates of claim, whereas the daily vacuuming of the carpeting involved in this dispute is performed by the janitor at that location.

The outside firm referred to was Paul's Rug Cleaning Service. The person who performed the work for Paul's Rug Cleaning Service is a regularly assigned Yardmaster, employed by this Carrier who performs part time duty

No janitorial employees, or other employees, covered by the clerical agreement has ever cleaned rugs on this property. As a matter of fact, the instant case is the first time the rugs have been cleaned since their installation. No other office, other than the Superintendent's Office and the General Offices, are furnished with rugs. Since this work has not been performed by clerical employees, such work cannot be considered as "belonging" to clerical employees.

There is nothing in the Scope rule or any other rule that gives exclusivity of rug cleaning work to clerical employees; nor is there anything in the Scope or any other rule that gives clerical employees exclusive right to any janitorial work.

The janitors covered by the clerical agreement do not have exclusive rights to all janitorial service since Maintenance of Way employees, Shopcraft employees, and agents also perform certain janitorial services.

The individual who performs this service must have certain skills in order to determine the proper mixture of chemicals and the use thereof and the use of necessary equipment, so as not to cause damage to valuable rugs.

Furthermore, this Carrier does not have the equipment available to perform the work in dispute, and nothing in the agreement makes it mandatory on the Carrier to purchase such equipment.

The claims in this dispute have been properly handled on the property in accordance with the provisions of the Time Limit on Claims rule now in effect. (Copies of correspondence involved are attached and marked as "Carrier's Exhibit A.")

(Exhibits not reproduced.)

OPINION OF BOARD: On December 30, 1965 and February 7, 1966 the Carrier engaged the services of an outside firm to clean several rugs, using a shampoo method. The rugs varied in size from 9 x 12 to 18 x 18 and were cleaned in place. Claimants were the senior available furloughed employees in the seniority district on the respective dates of claim.

The Organization, alleging a violation of the Scope Rule, contends the janitorial work in the offices involved such as cleaning and waxing floors, dusting, vacuum cleaning of carpets, etc., had for many years been performed by employees coming within the scope of the Agreement. Organization further contends that the equipment necessary to perform the cleaning involved could have been purchased or rented at nominal cost, and that no special skill was required to operate such equipment since similar work is performed by many householders.

Carrier contends that: (1) the Scope Rule is general in nature; (2) janitorial work has not been exclusively assigned to employees coming within the scope of the Clerks' Agreement; and (3) the work has been performed historically on the property by employees of other crafts. Further, Carrier contends that: (1) since this is the first time that the rugs were cleaned by the shampoo method the Organization cannot establish an exclusive right to the work through tradition, custom and practice; and (2) special skill was required to perform the work without damage to the rugs.

We find that the Scope Rule of the Agreement is general in nature, and that janitorial work is not exclusively assigned to employees coming within the scope of the Clerks' Agreement at all locations on Carrier's property. It is undisputed, however, that employees embraced within the scope of the Clerks' Agreement have performed, exclusively, the janitorial work in the offices involved in this dispute.

Carrier's defense that the work was of a character such as to permit of it being contracted out for reasons which have been recognized as proper by this Board is an affirmative one. The burden of proof rested with Carrier. Carrier failed to satisfy the burden in that it: (1) did not refute Organization's contention that the necessary equipment could have been procured or rented at nominal cost; (2) failed to adduce evidence that special skill was required to perform the work. We will sustain 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 violated by the Carrier.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 11th day of July 1968.