



Award No. 16548

Docket No. CL-17026

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**

NORTHWESTERN PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6305) that:

(a) Carrier violated terms of the Clerks' Agreement, particularly the Scope Rule, at San Rafael, California, when on Thursday, September 30, and Friday, October 1, 1965, it permitted and/or required an employe not covered by the Agreement to perform extra typing work in the Engineering Department.

(b) Carrier shall now be required to compensate Mary S. Sexton one day's pay for each date September 30 and October 1, 1965, the dates she was available for call, but was not utilized to perform the extra work involved in this dispute.

EMPLOYEES' STATEMENT OF FACTS: There is in evidence an Agreement between the Northwestern Pacific Railroad Company (hereinafter referred to as the Carrier) and the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes (hereinafter referred to as the Employes) having effective date of April 1, 1926, with subsequent revisions, which Agreement (hereinafter referred to as the Agreement) was in effect on the dates involved in this claim. A copy thereof is on file with the Board and by reference thereto is hereby made a part of this dispute.

On October 1, 1965, Local Chairman Kenneth C. Mahan was informed of an Agreement violation which occurred on that and the previous day in the Engineering Department, San Rafael, California, involving recognized clerical work being performed those two dates by a Rodman, an employe not covered by the Clerks' Agreement.

Under date of October 13, 1965, the Local Chairman filed a claim for two (2) days' pay with Carrier's Superintendent, Mr. S. J. Mackie, on behalf of an extra clerk, Mrs. Mary S. Sexton (hereinafter referred to as the Claimant) who was available but was not called to perform the typing work illegally performed by a Rodman assigned to the Engineering Department at Carrier's headquarters, San Rafael.

the entire day each date assembling the photographs, inserting them in the albums and typing the titles. Locations and titles were typed on labels and pasted under the photographs. The albums are approximately 20 inches x 24 inches x 4 inches thick. Each page contains four 8 inch x 10 inch photographs.

6. On October 13, 1965, claim was filed by petitioner's Local Chairman in behalf of Mary S. Sexton (hereinafter referred to as claimant), extra clerk, for one day's pay each date September 30 and October 1, 1965, account Harvey J. Senter, Rodman in the Engineering Department, doing clerical work; that is, typing, etc. Claim was denied by Carrier's Superintendent by letter dated December 9, 1965. (Correspondence between petitioner's Local Chairman and Carrier's Superintendent are shown as Carrier's Exhibit B, Sheets 1 to 8, inclusive.)

By letter dated May 25, 1966, (Carrier's Exhibit C) petitioner's General Chairman appealed the claim to Carrier's Vice President and General Manager. BI letter dated May 31, 1966, (Carrier's Exhibit D) the Carrier's Vice President and General Manager set a conference date with the petitioner's General Chairman for June 9, 1966. Conference was held and by letter dated June 13, 1966, (Carrier's Exhibit E) the claim was denied. In this letter Carrier's Vice President and General Manager brought out the fact that the petitioner's representative was shown the photograph albums that had been assembled in prior years wherein the titles of the photographs had been printed in ink by the technical employes of the Engineering Department. Petitioner's representative also saw the albums involved in the instant dispute, described supra.

(Exhibits not reproduced.)

OPINION OF BOARD: On the dates involved in this Claim a Rodman in the Engineering Department was assembling and titling storm damage photographs. Clerks allege that he spent both days typing the titles in violation of Clerks' Agreement.

The respective positions of the parties in the handling of the dispute on the property are summed up in Clerks' Submission:

"When claim was first presented, Superintendent Mackie apparently misconstrued the nature of the grievance since, in denying the claim, he stated . . . assembling photographs, inserting them in albums and printing or typing titles is not work that exclusively belongs to clerks. For many years work of this nature has been performed by supervisors and non-agreement employes in the Engineering Department. The Local Chairman attempted to clarify the issue by conceding to the Superintendent that he was correct insofar as assembling the photographs, inserting them in albums and then **handprinting** descriptive titles was concerned, but that this was a case where a non-covered employee was occupied for two days, **nearly full time**, typing out the necessary descriptions to be attached under each photograph mounted in albums for future reference by the Engineering Department.

Although the Local Chairman's next letter specifically called the Superintendent's attention to Rule 2(b) and clearly informed him of the Employes' position that, 'Anyone who spends (devotes) more

than four hours a day typing is defined as a clerk and not a rodman,' Mr. Mackie again, apparently, missed the point. He responded to affirm his prior declination and further contended 'The use of a typewriter is not exclusively clerical work. . . .'

Rule 2—Definitions of Clerical Workers, Etc. reads in material part:

"(b) Machine Operators—Employees who regularly devote not less than four (4) hours per day to the operation of office or station mechanical equipment requiring special skill and training—such as typewriters, calculating machines, bookkeeping machines, dictaphones and other similar equipment. (Emphasis ours.)

The Scope Rule of the Agreement is general in nature. Award No. 5404. On the property Clerks failed to adduce evidence that the work of titling the photographs was work which had been performed exclusively by Clerks. Therefore, to prevail, Clerks had the burden of proving that a specific provision of the Agreement supported its claim to the work. It cites Rule 2(b). The critical words in the Rule are "Employees who regularly devote not less than four (4) hours per day . . ." (Emphasis ours.) We cannot ignore the word "regularly." See Award No. 9572. Assuming that the Rodman did type the titles for more than four (4) hours on each of the two days this, it is apparent, cannot be construed as satisfying the specification "regularly." Therefore, Clerks have failed to prove a violation of Rule 2(b). 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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 2nd day of August 1968.