



Award No. 16550
Docket No. CL-17061

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**

**NEW YORK CENTRAL RAILROAD
(Southern District)**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6248) that:

(1) Carrier violated the rules of the current Clerks' Agreement when on July 15, 1964, it instituted the so-called "Lock Box" plan whereby its patrons at Indianapolis, Indiana were instructed to make remittances for Freight and Miscellaneous charges to a United States Post Office Box instead of to the Freight Agency, and

(2) Carrier's institution of a "Lock Box" plan must be considered as nothing less than contracting out work coming within the scope of the Clerks' Agreement, and

(3) Messrs. Theron L. Kilander, Cashier, E. J. Garvey, Assistant Cashier, and C. A. Hurley, Machine Operator, be paid for a two (2) hour call under Rule 20 of the current Agreement, for November 5, 1965 and two (2) hours' pay each date thereafter (Monday through Friday) that the violation continues, and

(4) Carrier shall now restore all work involved in this dispute to employees covered by the current Clerks' Agreement and

(5) The monetary claims involved herein are in addition to any and all other monies earned and are to be paid at the rate of pay of each claimant.

EMPLOYEES' STATEMENT OF FACTS: There is in effect a Rules' Agreement between the parties to this dispute, effective July 22, 1922, (revised January 5, 1951), copies of which are on file in the Offices of the Third Division of the National Railroad Adjustment Board, and which is made a part of this submission.

Claimants in this dispute are regularly assigned to positions in the Cashier's Office as follows: Mr. Theron L. Kilander, Cashier; Mr. E. J. Garvey, Assistant Cashier and Mr. C. A. Hurley, Machine Operator-Clerk.

granted to a bank in each city, its employees securing therefrom the remittances received each day and crediting to Carrier's account on a current daily basis instead of on the following or second business day following arrival at the Post Office.

This plan was placed in effect at Indianapolis, Indiana, on July 15, 1964, the Carrier's patrons being notified to send remittances to Post Office Box 1641, Indianapolis, Indiana. The Indiana National Bank at Indianapolis was designated to receive and handle such remittances.

The inauguration of this plan resulted in the claims progressed here, the Organization contending that it amounted to the contracting out of work which is reserved exclusively to Clerks under the Scope Rule of their Schedule, and the three claimants listed were deprived of work to the extent indicated in Statement of Claim.

OPINION OF BOARD: During the Summer of 1964 Carrier instituted what is known as the "Lock Box" Plan whereby its patrons, who had previously made their remittances for freight and miscellaneous charges to various Cashiers' Offices, were requested to make such remittances to a Post Office Box supplied by Carrier in the city where the Cashier's Office was located. Exclusive access to the box was granted to a bank in each of the cities, its employees securing therefrom the remittances received each day and crediting them to Carrier's account on a current daily basis.

On July 15, 1967, the "Lock Box" Plan was initiated in Indianapolis, Indiana. Carrier's patrons in that area were notified to send their remittances to Post Office Box 1641 in that city. The Indiana National Bank at Indianapolis was designated to receive and handle the remittances as per the Plan.

Claimants herein were regularly assigned to positions in the Cashier's Office in Indianapolis.

Petitioner contends that the placing of the Plan in effect at Indianapolis violated the Agreement. It says:

"The issue to be decided in this dispute is whether or not the Carrier is in violation of the Rules Agreement, **particularly the Scope Rule**, at Indianapolis, Indiana, when on or about July 8, 1964, the Carrier farmed out, through contract with the Indiana National Bank of Indianapolis, clerical work within the Cashier's Office **which had exclusively, historically and uninterruptedly been performed by employees covered by the Clerks' Agreement** since long before the effective date of the current Agreement, July 22, 1922." (Emphasis ours.)

From our study of the voluminous record and exhaustive briefs we find that the Scope Rule of the Agreement is general in nature and the issue is as stated by Petitioner.

That work of a like nature to that performed by the Bank under the Plan had been performed in Indianapolis by Claimants prior to the effectuation of the Plan is not controverted. The issue narrows as to whether the work had been performed system-wide exclusively by employees covered by the Agreement prior to the Plan being put in effect. On the property, in response to the Claim, Carrier averred it had not. This put Petitioner to its proof.

The case law of this Board makes axiomatic the following principles in interpreting and applying a general in nature Scope Rule relative to an organization's claim to exclusive right to certain work:

When the Agreement is system-wide the Organization, when challenged, has the burden of proving that the work involved has been performed, historically and customarily, system-wide by employees covered by the Agreement. Proof that it had been performed accordingly at an isolated situs does not satisfy the principle. See, for example, Award Nos. 12360, 12462, 13914, 13605, 13580, 13400, 13284, 13280, 13195, 12356, 12897, 12787, 12381, 12109, 11605, 12415.

As we have so often said the burden which a Petitioner bears to satisfy the principles is harsh. However, the many years ancestry of the principles must be honored in the interest of uniformity and stabilization throughout the industry. Be there any who find the principles repugnant — and we know there are some — their remedy lies in collective bargaining.

In the instant case Petitioner failed to adduce evidence that the work involved had been performed system-wide exclusively, historically and customarily, by employees covered by the Agreement. We, therefore, by adherence to the principles enunciated, *supra*, dismiss the Claim for lack of proof.

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 lack 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 2nd day of August 1968.