



Award No. 17236

Docket No. CL-17657

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION  
(Supplemental)**

Paul C. Dugan, Referee

**PARTIES TO DISPUTE:**

**BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP  
CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION  
EMPLOYEES**

**ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY**

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood (GL-6464) that:

- (1) The Carrier violated the terms of the Agreement between the parties on February 27 and 28, and March 1 and 2, 1967 when it arbitrarily removed work from the Scope of the Clerical General Rules Agreement and assigned it to employes having no seniority or other rights under the Clerks' Agreement to the performance of such work.
- (2) Employes V. V. Haflinger, P. M. Coffman, B. E. Daniels, W. W. Matlock, R. M. Jackson, K. A. Levitt and E. E. Conrad now be allowed eight hours at the overtime rate of their respective positions on February 27, 1967;
- (3) Employes V. V. Haflinger, P. M. Coffman, B. E. Daniels, W. Matlock, and R. M. Jackson now be allowed eight hours at the overtime rate of their respective positions on February 28, 1967;
- (4) Employes E. E. Conrad, J. O'Neill, Troy Sells, Elmo Johnson P. J. Urban now be allowed eight hours at the straight time rate of their respective positions on March 1, 1967;
- (5) Employes V. V. Haflinger, P. M. Coffman, B. E. Daniels, W. W. Matlock, and R. M. Jackson now be allowed eight hours at the overtime rate of their respective positions on March 2, 1967 and Mr. P. J. Urban shall now be allowed eight hours at the straight time rate of the freight handler position, rate \$22.56 per day for March 2, 1967.

**EMPLOYEES' STATEMENT OF FACTS:** On or about February 24, 1967, Carrier's Train #136 going north out of Springfield was involved in a derailment involving some 26 cars near Lamar, Missouri. Nine of the cars were repaired or the contents disposed of at the accident location. Seventeen of the cars were seriously damaged and were moved to the Carrier's North Yard for unloading.

The damaged cars contained such commodities as cloth, washers, yarn, underwear, chairs, wine, clay, towels, foil, pallets, merchandise and juice and were worked (lading transferred) by employees of Manpower, Inc., persons without seniority or other rights under the Clerks' Agreement. Seven employees of Manpower, Inc., worked on February 27; five worked on February 28; five worked on March 1 and six worked on March 2, all in the performance of work, which by history, practice and tradition, had always been performed by Carrier's own employees, subject to and under the scope and application of the Clerks' Agreement.

Claims in behalf of employees entitled to the work were filed and handled in the usual manner with designated representatives of the Carrier, up to and including the Director of Labor Relations, and were denied at all stages of handling. (See Employees' Exhibits 1(a) through 1(j) inclusive).

(Exhibits not reproduced)

**CARRIER'S STATEMENT OF FACTS:** Springfield, Missouri (239) is the hub of the Carrier's operating system. On February 26, 1967, Carrier's freight train No. 136, operating between Springfield and Kansas City, Missouri, derailed 26 cars at Lamar, Missouri (C-139). The claims before the Board evolved out of the salvage operation that followed.

The contents of nine of such derailed cars were disposed of at the scene of the derailment as outlined in the statement attached hereto as Carrier's Exhibit "A". The Organization does not concern itself with this phase of the salvage operation.

The other 17 cars involved, although heavily damaged, were rerailed and returned by a special train to the Carrier's North Yards at Springfield.

On February 27, 28, March 1 and 2, 1967 the Carrier used casual labor during daylight hours to transfer the lading from the wrecked cars to other cars for further movement as outlined in the statement attached hereto as Carrier's Exhibit "A-1". The claims before the Board grew out of this phase of the salvage operation.

The salvage transfer was made near the Mechanical Department area (Wheel Shop, Car Shop, Rip Tracks and Clean Out Tracks). The transfer of the salvage was under the general supervision of the Carrier's Superintendent Freight Claims and at the expense of the Freight Claims Department.

The point in the Carrier's North Yards where the salvage in question was transferred is located about three miles from the Carrier's Freight Station where the claimant stevedores are employed. Each claimant's status on the claim dates is indicated in the statement attached hereto as Carrier's Exhibit "A-2".

(Exhibits not reproduced)

**OPINION OF BOARD:** Train #136 was derailed near Lamar, Missouri causing damage to a number of cars containing various items of merchandise. The merchandise was transferred from the damaged cars by employees of Manpower, Inc. Petitioners base their claim on the premise that work involved herein was covered by the Scope Rule of the Agreement and Carrier cannot assign said work to others not under Agreement, and by doing so in this instance, Carrier violated the Agreement.

This Board has held that the Scope Rule in the Clerk's Agreement is general in nature. See Award 15695. Thus, it is incumbent upon Petitioner's to prove by competent evidence that the work herein in dispute has been exclusively performed by clerical employees, system wide, by practice, custom and tradition.

A close examination of the record discloses that Petitioners failed to meet said burden with competent and positive evidence of proving "exclusivity" to said work system wide, by practice, custom and tradition.

Therefore for the aforesaid reasons, we are compelled to deny this 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.

#### **A W A R D**

Claim denied.

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
By Order of Third Division

**ATTEST: S. H. Schulty**  
**Executive Secretary**

Dated at Chicago, Illinois, this 25th day of June 1969.