



Award Number 17626

Docket Number CL-18239

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Don Gladden, Referee

PARTIES TO DISPUTE:

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

MISSOURI PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6612) that:

1. Carrier violated the Clerks' Agreement May 6, 1967 when it required and permitted a Carrier official to transport train and engine crews on the line of road to relieve train crew who had tied up under the 16-hour law prior to their arrival at San Antonio, Texas.
2. Carrier shall now be required to compensate Claimant A. Rodriques one (1) day's pay account of such violation.

EMPLOYES' STATEMENT OF FACTS:

1. For many, many years prior to March 1964, Carrier employes covered by the Clerks' Agreement at San Antonio, Texas, chauffeured train and engine crews in their private automobiles and was paid automobile mileage for doing so.

2. March 1964 the Carrier purchased a station wagon carry all and the work of chauffeuring train and engine crews continued to be performed by persons covered by the Clerks' Agreement using company vehicle in lieu of their own private automobile.

3. The Carrier continued to use clerical employes to chauffeur train and engine crews, such clerical employes being assigned to regular assigned positions in various seniority groups.

4. Claims were filed by various clerical employes in various seniority groups account their being required to suspend their regular assigned duties in order to perform chauffeur work account such work was not assigned to their positions by bulletin. Claims were declined by the Carrier account of Rule 50 among other reasons. (Employes' Exhibit No. 15)

5. The Employes, after much study, decided that since clerical employes were performing this work and had been for many years, keeping in mind the provisions of Rule 50, did not process the claims.

6. Several times subsequent to March 26, 1965, various clerical employes while chauffeuring train and engine crews, in the company vehicle, were stopped by San Antonio City Policemen and/or Texas State Highway

"It is well established that the operation of company-owned vehicles is not reserved exclusively to any groups or craft of employes and the performance of this work by the road foreman of engines is certainly not a violation of the Clerks' Agreement. While the Carrier has the right to require clerks to operate company vehicles when necessary, there has been no commitment by the Carrier to grant exclusive rights to clerks to drive company-owned vehicles as claimed here. As previously stated, it is a matter of record that the driving of company vehicles on this property has never been the exclusive work of any class of employes."

Exhibit "B."

11. Conference on the dispute was confirmed in pertinent part as follows:

"During conference you were advised that clerks do not have the exclusive right to operate company owned vehicles in order to take a relief train crew to trains tied up under the 16-hour law on the line of road. The fact that they may have been utilized to perform this service does not in itself place such duties within the scope of the Clerks' Agreement exclusively.

In view of the foregoing, we cannot change the decision given you in our original letters of declination."

Exhibit "C."

12. The Employes offered to settle this claim and two other similar claims for a call. However, the offer was rejected. Carrier's Exhibit "D." Further correspondence was received from the Employes dated March 3, 1969. Carrier's Exhibit "E."

13. The claim was not composed on the property and we are in receipt of the Employes' notice of intent to file the claim with your Board.

(Exhibits Not Reproduced)

OPINION OF BOARD: This claim involves a procedural issue as well as its merits.

Carrier claims that this claim should be dismissed due to the Organization's failure to cite a specific rule it alleges the Carrier to have violated. There is nothing in the record that this issue was raised on the property and that there was any question as to the rule made the basis of the claim.

Carrier's suggestion that the claim be dismissed is therefore denied.

The claim on its merits involve the Scope Rule of the controlling agreement which is general in nature.

On May 6, 1967 the Carrier required a person not covered by the Clerks' Agreement, to transport train and engine crews to relieve crews tied up under the 16 hour law.

The Organization alleges that transporting of the crews in question was work falling within the scope of Rule 1 of the agreement and that failure to assign such work to Claimant on the occasion in question was in violation of such rule.

The record reflects that employees covered by the agreement had transported train crews for many years, that the Carrier secured a station wagon for this purpose and, in March of 1966 by bulletin required callers and messengers to have chauffeur's license. However as late as 1965, the Organization filed claims contending that members of the Organization could not be required to transport crews. These claims were later withdrawn.

The Organization contends, and the Carrier denies, that the work in question has been done exclusively by employees covered by the agreement. While there is evidence that employees covered by the agreement performed the work in question in the past there is no showing that they did so to the exclusion of other employees of the Carrier.

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 19th day of December 1969.