Award No. 17934
Docket No. CL-18124

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Charles W. Ellis, Referee

PARTIES TO DISPUTE:

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

THE ALTON AND SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6530) that:

(a) Carrier violated the rules of the Clerks' Agreement at East St. Louis, Illinois, when on February 20, 21, and 23, 1968, it assigned the work of footboarding operating department crews to employees not subject to the scope and application of the Clerks' Agreement, and that:

(b) Mr. C. Ozement shall now be allowed three hours pay as reparation for each day the violation occurred.

EMPLOYES' STATEMENT OF FACTS: At East St. Louis, Illinois, the Carrier maintains company owned vehicles which are used to transport operating department crews from the point where they report for duty to their actual work location and to return the crew they relieve to the starting location (this operation is locally referred to as "footboarding crews"). For many years prior to February 20, 1968 employees subject to the scope and application of the Clerks' Agreement have enjoyed the right to perform the work of "Footboarding crews", and the Claimant has personally performed this work on numerous occasions during his nearly 27 years of service as a Clerk.

The Claimant, Mr. C. Ozement, is regularly assigned to a position of Yard clerk and was available to perform the work on each of the three dates in question.

CARRIER'S STATEMENT OF FACTS:

1. The agreement involved in this dispute is "Agreement between the Alton & Southern Railway Company and the Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes," effective July 9, 1957, as amended, copy of which is on file with your Board and by reference is made a part of this submission.

2. Claimant C. R. Ozment is employed as a clerk at East St. Louis, Illinois, and on claim dates held a regular assignment as yard clerk with hours 4:00 P.M. to 12:00 midnight, Monday through Friday. Claim dates were work days of claimant's assignment.

3. On each claim a switch crew was going on duty at approximately 7:57 A.M. in the vicinity of the crewmen's locker room at 26th and Trendly, East St. Louis, Illinois. The Carrier is obligated to transport crew members from the locker room location to the location of their engine. Throughout the years, transportation for these crew members has been furnished by various means, such as taxicabs, automobiles operated by Carrier officers, patrolmen (Carrier employes), as well as vehicles operated by messengers and clerical employes. On claim dates, the five members of the switch crew which went on duty at 7:57 A.M. in the vicinity of the locker room at 26th and Trendly were transported by automobile operated by a patrolman a distance of approximately two miles to their engine located at the Crest Tower.

4. Yard Clerk C. R. Ozment contends a clerk should have been used to perform this function, and that the performance of this function by patrolmen is a violation of the Clerks' Agreement. Because of this alleged violation, Clerk Ozment filed a monetary claim for three hours at the straight time rate for each day February 20, 21 and 23, 1968 ". . . account footboard made by watchmen, 7:57 A.M. crew to Crest Tower."

5. The Carrier declined the requested payments because this function has never been reserved exclusively to clerks either by rule or practice.

OPINION OF BOARD: At East St. Louis, Illinois, Carrier maintains company-owned vehicles which are used to transport operating department crews from the point where they report for duty to their actual work location and to return the crew they relieve to the starting location, such operation locally referred to as "footboarding crews".

There is at issue in this case the question of whether the work of footboarding crews is within the exclusive jurisdiction of the clerks organization to perform. The Scope rule involved is Rule 1 (a) and provides, in part, as follows:

"Rule 1—Scope and Classification

(a) Coverage. These rules shall govern the hours of service and working conditions of all employees engaged in the work of the craft or class of clerical, office, station and storehouse employees. Positions or work coming within the scope of this agreement belong to the employees covered thereby and nothing in this agreement shall be construed to permit the removal of positions or work from the application of these rules. * * *"

Carrier cites Award 14746 (Rambo) for the proposition that it is incumbent upon the Organization to show through custom, tradition and past practice that the clerks have performed the subject work exclusively throughout the system. We agree that the Scope Rule before us does not in and of itself reserve to the Organization the right to do the work in question but that inquiry must be made into the custom, tradition and past practice to arrive at the answer.

Organization attaches 3 relevant exhibits to its submission which are statements of operational policy, in two instances, and a letter from Carrier's Director of Personnel to the Organization's General Chairman. These exhibits indicate, at least, that the work of footboarding crews belongs to the clerks organization if a clerk is "available" to perform the work, and at most that the work belongs to the clerks outright and without reservation or condition.

Carrier objects to the consideration of these exhibits on the ground that they were not made available to Carrier on the property but have been introduced for the first time with Organization's ex parte submissions and rebuttal filed with this Board.

Carrier cites several Awards bearing on this proposition. It seems apparent from those awards that those evidentiary exhibits having a bearing upon the issues considered on the property may be properly considered by this Board. Award 10385 (Dugan) 10967 (Dorsey), 11598 (Dolnick). We also observe that the exhibits in question were drafted by officials of the Carrier and, we assume, copies thereof were available to the Carrier from the inception of this grievance. We hold that the disputed exhibits are properly before this Board.

Carrier contends that these exhibits give the clerks the right to this footboarding work only if a clerk is available and further contends that on the date in question there was no clerk available. The undisputed facts are that a clerk was not available to work at the pro rata rate but was available to work at the punitive rate. The phrase "available" is therefore subject to interpretation to find its meaning in this regard.

In interpreting a clause all doubts as to its meaning will be resolved against the author of the clause who had it within his power to include or exclude, limit or enlarge, the clause in any manner he preferred. We therefore find that Claimant was "available" to work at the punitive rate and that Carrier was bound to call Claimant to work. This conclusion is also buttressed by the clear prohibition upon the Carrier from removing any work within the Scope Rule from the application of the Agreement.

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 Employes involved in this dispute are respectively Carrier and Employes 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.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 21st day of May 1970.

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