



Award Number 17954

Docket Number CL-18265

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur W. Devine, Referee

PARTIES TO DISPUTE:

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

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6599) that:

- (1) That Carrier violated the Clerks' current Agreement effective November 9, 1967, when it assigned clerical work covered by the agreement to an employee of Carrier not covered by the agreement.
- (2) That Mrs. S. V. Hutcheson, the senior available furloughed clerk, and/or her successor, or successors, be paid for eight hours time for November 9, 1967, and likewise, for each subsequent date of the violation until it ceases.

EMPLOYEES' STATEMENT OF FACTS: Claimant, Mrs. S. V. Hutcheson, a furloughed employee, holds Group 1 seniority in the Mechanical Department, Pine Bluff, Arkansas, dating from May 15, 1956, and is qualified and capable of performing the work involved in this dispute.

Pine Bluff, Arkansas, is located approximately midway of Carrier's main line operations and is the headquarters of Carrier's Operating Department, Mechanical Department, Storeroom Department, Dispatcher's Office and Superintendent's Office. It is where all major repairs to engines and cars, etc., is performed. All traffic moving over Carrier's line from the East and Northeast to the West and Southwest, or vice versa, moves through Pine Bluff and, therefore, it is the largest and busiest point of operations on Carrier's lines.

Approximately twenty-one (21) through freight trains are handled in and out of Pine Bluff over Carrier's rails each day, not counting locals originating or terminating there, handling approximately three thousand (3,000) cars per day. During the month of October, 1968, a total of 104,742 cars was handled through the Pine Bluff Yards, compared with 81,758 for the same period in 1967. The average number of cars handled through the Pine Bluff Yard in 1967 was 74,416 compared with 90,893 per month for 1968, more than 20% increase.

Because of the increase in the number of cars handled, it necessarily increased the amount of clerical work required in Mechanical Department and under date of November 2, 1967, General Car Foreman G. C. Martin issued Advertisement Bulletin No. 174, bulletining a position identified as

1967, and each succeeding day thereafter until the violation was discontinued and that this was to be in addition to any payment already received.

The claim was denied.

On appeal the claim was revised in favor of Mrs. S. V. Hutcheson, the senior available furloughed clerk, and/or her successor, or successors, for eight hours time for November 9, 1967, and likewise, for each subsequent date of the alleged violation until it ceases.

Exhibit 1 is attached hereto and made a part hereof.

The applicable schedule agreement is that with the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees effective April 1, 1946, reprinted January 1, 1963, with revisions, copy of which is on file with the Board.

(Exhibits Not Reproduced)

OPINION OF BOARD: The dispute herein involves an allegation by the Petitioner that a Carman assigned to position of Spot Freight Car Welder No. 3-N in the Carrier's Pine Bluff Gravity Yard performs clerical work approximately seven hours and thirty minutes each day of his assignment. The Carrier contends that the Carman position involved has been in existence since 1965, denies that the occupant of the position performs clerical work to the extent alleged by the Petitioner, and contends further that any clerical work performed by the occupant of the Carman position is incidental to and in connection with his regularly assigned duties as Carman, and is not work which has been performed exclusively by Clerks on the property of the Carrier.

It is well settled that in proceedings before this Board it is essential that the Petitioner prove all essential elements of its claim. It is also well settled that mere allegations and assertions are not proof.

In Award 13923, involving the same parties, we held:

"It has been long and firmly established by decisional rule of this Board that an organization laying claim to specific work—where the Scope Rule of the collective bargaining agreement is general in nature—has the burden of proving that the employees covered by the agreement have, historically and customarily, exclusively performed the work on the property. In the instant case Clerks failed to satisfy the burden. We, therefore, will deny the Claim."

Also, in Award 14695, involving the same parties, we held:

"Petitioner's position is that the work of the Cashier and Assistant Cashier at Mt. Pleasant, Texas had been performed traditionally and exclusively by clerks from 1917 to May 1960 and that Carrier violated the controlling Agreement between the parties when such work was removed from the scope of the Clerks' Agreement.

Carrier's defense is that the Scope Rule of the Clerks' Agreement is general in nature and that the Petitioner cannot prove that the work in issue has been traditionally and customarily performed by employees covered by said Agreement on a system-wide basis to the exclusion of all others.

We find the position of Carrier persuasive because the Agreement covers an entire system in scope and application. (Awards 11239 and

13579). Since Clerk-Telegraphers and Cashier-Telegraphers are employed in freight offices at other stations throughout Carrier's system, we cannot find a violation of the controlling Agreement. Therefore, we must deny the claim."

The principles enunciated in the foregoing awards, which are supported by numerous other awards of the Division, are dispositive of the issues involved in our present dispute. The record does not contain evidence of probative value supporting the allegations of the Petitioner. The claim will, therefore, be denied.

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 28th day of May 1970.