

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Paul C. Dugan, Referee

PARTIES TO DISPUTE:

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

THE CENTRAL RAILROAD COMPANY OF NEW JERSEY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6660) that:

(a) Carrier violated Rule 1, 19 (1), Implementing Agreement signed March 28, 1968 covering consolidation of Elizabethport, N. J. train and engine crew dispatching forces with Jersey City, N. J. train and engine crew dispatching forces, and related rules of the Clerks' Agreement at Elizabethport, N. J., on September 14, 28, October 5, 12, 19, 26, November 2, and 9, 1968, when they allowed or required yardmasters and trainmasters to perform work exclusively assigned to position No. 996, Chief Clerk, Monday to Friday, inc., and

(b) Carrier shall be required to compensate Mr. P. J. Russo, his successor and/or successors a day's pay, at the punitive rate, for each of October 26, November 2, and 9, 1968 and each subsequent day violation is continued, and

(c) Carrier shall be required to compensate Mr. J. Cund a day's pay, at the punitive rate, for each of September 14, 28, October 5, 12, and 19, 1968 and each subsequent day that violation is continued while Mr. J. Cund is temporarily working position No. 996, Chief Clerk.

EMPLOYEES' STATEMENT OF FACTS: Effective 7:55 A. M. on April 8, 1968 Carrier accomplished the physical consolidation of crew dispatching work, transferred from Elizabethport, N. J., to existing crew dispatching positions located in Jersey City, N. J. The consolidation was negotiated by the parties, culminating in an Implementing Agreement signed on March 28, 1968. (Employees' Exhibit "A"). Article 3 of the Implementing Agreement provides that position No. 996, Chief Clerk at Elizabethport, N. J. will post on bulletin board a copy of the daily crew assignments as delivered by Messenger from the Consolidated Crew Dispatchers Office in Jersey City,

Clerk-Typist at Elizabethport were abolished and balance of crew dispatching force at that location transferred to and consolidated with other crew dispatching forces at our Communipaw Terminal, Jersey City, N. J., with Chief Clerk remaining at Elizabethport.

Paragraph 3 of the aforesaid agreement provided:

"All work presently being performed by the Crew Clerks and Crew Dispatchers at Elizabethport, N. J., will be transferred to Consolidated Crew Dispatcher's office in Jersey City, N. J., and will be performed exclusively by Employees working in positions coming under the scope of the Clerical Agreement, **except that Position No. 996, Chief Clerk, will post on bulletin board a copy of the daily crew assignments as delivered by Messenger from the Consolidated Crew Dispatcher's office in Jersey City, N. J. and distribute pay checks for Elizabethport, N. J. employees on the basis of three (3) hours assigned overtime each payday, with the Yardmaster distributing the remaining checks.**" (Emphasis added.)

Prior, and for a period of time subsequent to this transfer and consolidation, the Chief Clerk had been reporting on Saturdays, as required by the Carrier, for which he was compensated 8 hours at punitive rate. After noting a decline in activity on Saturdays, it was determined this additional expense was not warranted and Carrier, in the exercise of its managerial prerogative and business judgment, instructed him to discontinue reporting for work on those days.

OPINION OF BOARD: This claim is predicated upon the assertion that Carrier upon consolidation of crew dispatching work violated the Agreement when it permitted employees not covered by the Agreement, yardmasters and trainmasters to perform work which by Agreement was exclusively assigned to Chief Clerk's Position No. 996 at Elizabethport, N. J.

Prior to and for a time subsequent to the transfer and consolidation, the Chief Clerk had been reporting on Saturdays to perform the claimed work.

The Organization relies on: (a) Articles 3 and 9 of the Implementing Agreement of March 28, 1968 between the parties hereto; (b) Rules 19(1) and 1(g), claiming that the work items of "posting on bulletin board a copy of the daily crew assignment" and "taking from customers orders for industrial drills and preparing the drill slips for the crews" were performed by non-scope employees on the dates in question.

Articles 3 and 9 of the Implementing Agreement of March 28, 1968 provides as follows:

"3 — All work presently being performed by the crew Clerks and Crew Dispatchers at Elizabethport, N. J. will be transferred to Consolidated Crew Dispatcher's Office in Jersey City, N. J. and will be performed exclusively by Employees working on positions coming under the scope of the Clerical Agreement, except that Position No. 996, Chief Clerk, will post on bulletin board a copy of the daily crew assignments as delivered by Messenger from the Consolidated Crew Dispatchers Office in Jersey City, N. J. and dis-

tribute pay checks for Elizabethport, N. J. employes on the basis of three (3) hours assigned overtime each payday, with the Yardmaster distributing the remaining checks."

"* * * * *

"9 — It is further understood and agreed that all work referred to and/or involved in this agreement, being a part of the clerical craft or class covered by the general Clerical Agreement, shall continue to be in and under the general Clerical Agreement, and the filling of vacancies, the changing of rates of pay and all other matters pertaining to the rights and interest of the Employes of the Clerical Craft or Class will be handled in conformance with the provisions of the existing general Clerical Agreement between the Carrier and the Clerks' Organization, and the Railway Labor Act, as amended, and all such work shall be performed by Clerical Employes holding seniority rights in and assigned to positions in the offices, departments and operations and at the locations involved in this Agreement unless otherwise agreed in writing between the Management and the General Chairman of the Brotherhood of Railway Clerks on the Central Railroad Company of New Jersey."

Rule 19(1) reads as follows:

"Where work is required by the Carrier to be performed on a day which is not a part of any assignment, it may be performed by an available regular extra or furloughed Employee who will otherwise not have 40 hours of work that week; in all other cases and on the holidays specified in Rule 22(b), by the regular Employee."

Rule 1 (g) establishes as follow:

"Positions or work within the scope of this Agreement belong to the Employes covered herein as provided for in these rules and nothing in this Agreement shall be construed to permit assigning this work to other than Employes covered by and as provided for in these rules or prevent the application of these rules to such positions or work except as provided for in Rule 9(g) (2) or by mutual agreement between the Management and the General Chairman."

Carrier's position is that inasmuch as the scope rule is general in character, there is no prohibition against non-scope employes performing clerical work; that lining up crews is the responsibility of the Trainmaster, and there is nothing violative of Rule 19(1), nor the Implementing Agreement, if, in the absence of the clerk, the Trainmaster spends an infinitesimal amount of time in posting such a notice; that due to the inadequate amount of work on rest days for Position No. 996, Carrier elected to adhere to its right of good business judgment to discontinue the assignment of said position on Saturdays; that the work in question is germane to the overall duties of the trainmaster and the Organization failed to dispute the fact that non-scope employes in the performance of their duties do perform some segment of so-called clerical work; that Position No. 996 is not a 7-day position (not covered by relief on rest days) and the work in question does not fall in the category of being "essential" to the operation of the Carrier.

While it is true that the Organization failed to prove that the work of "taking orders from customers for industrial drills and preparing the drill slips for the crews" has been performed exclusively by Clerks, nevertheless Carrier violated the Agreement, in particular Paragraph 3 of the Implementing Agreement of March 28, 1968 governing the parties to this dispute. The fact that it takes an infinitesimal amount of time to post the notice does not excuse the violation. Carrier clearly bound itself to said Implementing Agreement when it clearly agreed that the Chief Clerk will post on bulletin board a copy of the daily crew assignments. Having agreed to such a provision, this Board is without authority to change, alter, add to, or subtract from an Agreement. Therefore, we find that Carrier violated the Agreement when it permitted others than the holder of Position No. 996 to post copy of the daily crew assignments on the bulletin board, and thus we will sustain the claim.

Carrier's member of this Board, in his brief submitted to this Board for its consideration, contended that if the Board finds a violation of the Agreement by Carrier, then inasmuch as the claim as presented to this Board is in a nature of a penalty, therefore this Board is without authority to assess penalties. However, this contention was at no time raised by the Carrier on the property or in its exparte submission and rebuttal to this Board for consideration. This Board has repeatedly and consistently held in a long line of Awards that assertions or contentions not raised on the property cannot be considered by the Board in the determination of a dispute. Therefore, we must reject said contention of Carrier's member of this Board in regard to "damages".

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 violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 17th day of July 1970.

Keenan Printing Co., Chicago, Ill.

Printed in U. S. A.