

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**John H. Dorsey, Referee**

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**PARTIES TO DISPUTE:**

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

**THE DENVER AND RIO GRANDE WESTERN  
RAILROAD COMPANY**

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood (GL-6667) that:

1. Carrier violated rules of the current Clerks' Agreement when it contracted or assigned multigraph work that has been traditionally, customarily and historically performed by employees covered by the scope of the Clerks' Agreement to a private firm whose employees hold no seniority under the Clerks' Agreement.

2. Carrier shall now be required to return the multigraph work to employees holding seniority under the scope of the Clerks' Agreement.

3. Carrier shall now pay Mr. W. F. Sealy the difference in rate between position of Assistant Multigraph Operator (\$23.75 per day) and Outside Receiving Clerk (\$23.65 per day) beginning April 26, 1968 and continuing until this violation is corrected.

4. Carrier shall now pay Mr. Lester Dale the difference in rate between position of Outside Receiving Clerk (\$23.65 per day) and Helper rate (\$22.75 per day) beginning April 26, 1968 and continuing until violation is corrected.

5. Carrier shall now pay Mr. W. A. Moeller the difference in rate between position of Multigraph Operator (\$25.88 per day) and Shop Delivery Clerk (\$24.05 per day) beginning May 1, 1968 and continuing until violation is corrected.

6. Carrier shall now pay Mr. Gordon Pixler the difference in rate between the position of Shop Delivery Clerk (\$24.05 per day) and Sectional Storekeeper (\$23.83 per day) beginning May 1, 1968 and continuing until violation is corrected.

7. Carrier shall now pay Mr. W. J. Ladd the difference in rate between position of Sectional Storekeeper (\$23.83 per day) and position of Helper (\$22.75 per day) beginning May 1, 1968 and continuing until violation is corrected.

**OPINION OF BOARD:** Petitioner's allegations on which the Claim is based are set forth in the Claim as filed with the Storekeeper by the Local Chairman under date of June 14, 1968:

"On April 26, 1968, Carrier abolished the position of Assistant Multigraph Operator and on April 30, 1968 abolished the position of Multigraph Operator. On May 1, 1968, Carrier removed all multigraph work that was performed by these employees coming under the scope of the Clerks' Agreement and contracted said work to a private concern known as Pearl-Friedland Company, Inc., 2119 Curtis Street, Denver, Colorado. This work consisted of imprinting run envelopes, blank envelopes, printing of all single forms used by the Carrier up to 11 inches by 17 inches in size. The Multigraph Operator and Assistant Multigraph Operator also cut these forms and padded them. Both employees punched the tariffs used by the D&RGW, cleaned the forms, filed forms and negatives as well as all other incidental duties required of a Multigraph operation.

This work has been performed by employees covered by the Clerks' Agreement from the time the first agreement was signed between the Organization and the Carrier when such work was formerly performed at the Stationery Department.

Further, such recognition by the Carrier of the fact that this work has been historically, traditionally and customarily performed by employees covered by the Clerks' Agreement is evident by agreement signed in 1955 providing for transfer of said employees and work from the original Stationery Department to the Store Department.

Parts 4, 6 and 7 of this claim are those employees affected by the Assistant Multigraph Operator and Multigraph Operator exercising their seniority as a result of the job abolishment. Those employees also suffered wage loss as a result of the Carrier removing the multigraph work from the scope of the Clerks' Agreement."

The pivotal issue confronting us is raised by Carrier's defense:

"The multigraph work referred to in your letter has not been traditionally, customarily and historically performed by clerks to the exclusion of others."

The Scope Rule is general in nature. Consequently, by application of the established case law of this Board, Petitioner bore the burden of proving, by substantial evidence of probative value, that the work involved had been performed, on the property, exclusively by Clerks historically, traditionally and customarily. Petitioner does indeed recognize this in its Claim letter, *supra*.

The "agreement signed in 1955," cited by Petitioner, abolished certain positions in the Stationery Department under Seniority District No. 10 and transferred the work of those positions to positions to be bulletined in Seniority District No. 32. This agreement, like the Scope Rule, does not evidence work exclusively reserved to Clerks. It merely lists "Title of Position." Therefore, it is without probative value material and relevant to the issue.

The record settles into contradictory declaratory statements. Petitioner failed to support its declarations by evidence of probative value. It, therefore, failed to satisfy its burden of proof. By logical sequence we are compelled to dismiss the Claim for failure of proof.

**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 Claim must be dismissed for failure of proof.

#### AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 9th day of October 1970.