

Award No. 18269

Docket No. CL-18583

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**

**NORFOLK AND WESTERN RAILWAY COMPANY
(Lake Region)**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6745) that:

(a) Carrier violated the terms of the Working Agreement dated October 1, 1950, when on October 17, 18, 19, 20, 21, 22 and 23, 1968, they had one, J. D. Stadler and approximately eight other persons wash walls in new administration building, Bellevue, Ohio, instead of calling available clerical help to perform this janitorial service.

(b) Carrier shall now be required to pay Clerk H. E. Turner eight hours pro rata pay for each of the following claims as presented:

October 18, 1968 from 11:45 p.m. to 7:45 a.m.
October 19, 1968 from 11:45 p.m. to 7:45 a.m.
October 21, 1968 from 11:45 p.m. to 7:45 a.m.
October 22, 1968 from 3:45 p.m. to 11:45 p.m.
October 23, 1968 from 3:45 p.m. to 11:45 p.m.

(c) Carrier shall be required to pay Clerk D. E. Garman eight hours pro rata pay for each of the following claims as presented:

October 17, 1968 from 7:45 a.m. to 3:45 p.m.
October 17, 1968 from 3:45 p.m. to 11:45 p.m.
October 17, 1968 from 11:45 p.m. to 7:45 a.m.
October 18, 1968 from 3:45 p.m. to 11:45 p.m.
October 18, 1968 from 11:45 p.m. to 7:45 a.m.
October 19, 1968 from 3:45 p.m. to 11:45 p.m.
October 19, 1968 from 11:45 p.m. to 7:45 a.m.
October 20, 1968 from 3:45 p.m. to 11:45 p.m.
October 20, 1968 from 11:45 p.m. to 7:45 a.m.

October 21, 1968 from 3:45 p.m. to 11:45 p.m.
October 21, 1968 from 11:45 p.m. to 7:45 a.m.
October 22, 1968 from 3:45 p.m. to 11:45 p.m.
October 22, 1968 from 11:45 p.m. to 7:45 a.m.

(d) Carrier shall be required to pay Clerk E. E. Englund eight hours pro rata pay for each of the following claims as presented:

October 17, 1968 from 7:00 a.m. to 3:00 p.m.
October 17, 1968 from 3:00 p.m. to 11:00 p.m.
October 18, 1968 from 7:00 a.m. to 3:00 p.m.
October 18, 1968 from 3:00 p.m. to 11:00 p.m.
October 18, 1968 from 11:00 p.m. to 7:00 a.m.
October 19, 1968 from 7:00 a.m. to 3:00 p.m.
October 19, 1968 from 3:00 p.m. to 11:00 p.m.
October 19, 1968 from 11:00 p.m. to 7:00 a.m.
October 20, 1968 from 3:00 p.m. to 11:00 p.m.
October 20, 1968 from 11:00 p.m. to 7:00 a.m.
October 21, 1968 from 7:00 a.m. to 3:00 p.m.
October 21, 1968 from 11:00 p.m. to 7:00 a.m.
October 22, 1968 from 7:00 a.m. to 3:00 p.m.
October 22, 1968 from 11:00 p.m. to 7:00 a.m.

EMPLOYEES' STATEMENT OF FACTS: During the month of October, 1968, the division offices located at Bellevue, Ohio, were preparing for an inspection of the premises by the President and Board of Directors of the Norfolk and Western Railway Company.

In order to properly prepare for the inspection Carrier deemed it necessary to have the walls washed. Instead of assigning this janitorial work to the qualified employees in the bargaining unit holding seniority rights thereto the Division Engineer, on or about October 16, 1968, contracted with Junior Clerk J. D. Stadler who, together with other clerical employees working around the clock, completed the janitorial duties of washing the walls on or about October 23, 1968.

Clerk Stadler and other junior Clerks worked at washing walls on October 17, 18, 19, 20, 21, 22 and 23, 1968. Consequently the above named Claimants, all senior qualified and available employees, claimed pay for each of the days and shifts worked by junior employees because the work was not offered to them. Each of these employees had complied with Rule 28 (d) by indicating in writing that they desired relief work and they were not called for this work on the basis of seniority as required under the Agreement.

Had Carrier complied with the Agreement there would have been no extra expense involved in buying any equipment as everything needed for the task of washing was available as common janitor supplies in Carrier's stores at Bellevue, Ohio.

Claims were originally filed with General Yardmaster, R. M. Black. Claims for H. E. Turner and D. E. Garman were filed on October 28, 1968 and claims for E. E. Englund were filed on October 26, 1968. Each of the

Exhibit "E" — March 21, 1969 — Acknowledgment of Appeal — Manager Labor Relations to General Chairman.

Exhibit "F" — May 15, 1969 — Denial of Claims — Manager Labor Relations to General Chairman.

Exhibit "G" — May 20, 1969 — Request for Conference — General Chairman to Manager Labor Relations.

Exhibit "H" — July 3, 1969 — Conference Granted — Manager Labor Relations to General Chairman.

Exhibit "I" — August 26, 1969 — Conference Confirmed and Denial Affirmed — Manager Labor Relations to General Chairman.

The original claims filed the latter part of October, 1968 were based on the assertion that, "The Carrier violated the agreement in working a junior employee to myself in janitorial service on the above date and time". Appeal to the Superintendent by the Vice General Chairman was made on the same basis. (Carrier's Exhibit "B"). In the superintendent's denial, it was pointed out to the Vice Chairman that the work performed was by contract. It was strictly coincidental that the contractor's employees happened to include some of this Carrier's clerical employees. (Carrier's Exhibit "C"). It was on this basis that the General Chairman appealed the claims to the Manager Labor Relations on March 18, 1969. (Carrier's Exhibit "D").

(Exhibits not reproduced.)

OPINION OF BOARD: This claim arose as a result of Carrier contracting out the work of washing walls, in this instance to Junior Clerk J. D. Stadler, as an outside contractor.

The Organization contends that Carrier violated the Scope Rule as well as Rule 27(d), Rule 27(e) and Rule 27(f) of the Agreement.

It is the Organization's position that (1) work or duties are included in the Scope Rule by reference to the position of janitor and by including miscellaneous employees whose duties are analogous to those enumerated in said section, and (2) that there being certain exceptions written therein no others should be implied; that the Agreement reserves to employees of the bargaining unit janitorial work which is to be offered to them in accord with the Seniority and other rules.

Carrier's defense to this claim is that (1) the Scope Rule being general in nature by listing only positions and not describing the work, the work here involved has been customarily and traditionally performed by others than clerks (janitors), such as employees of the Bridge and Building Department, outside contractors and maintenance of way employees, and especially at one man stations on the line where no clerks and/or janitors are employed, and therefore janitorial service has never been the exclusive work of clerks.

The Scope Rule is the primary rule relied on by the Organization, and the other rules cited by the Organization as allegedly being violated by

Carrier need not be considered herein unless we first find a violation of the Scope Rule. See Award 17944.

This Board in a long line of previous awards has uniformly held that where a Scope Rule is general in nature, the Organization has the burden of proving that the work involved has been performed, historically and customarily, system-wide by employees covered by the Agreement.

The record clearly discloses that the Organization failed to meet its burden of proof in this instance, and therefore we must deny the claim.

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.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 13th day of November 1970.