



Award No. 18282
Docket No. CL-18553

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 EMPLOYES**

THE LONG ISLAND RAIL ROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6737) that:

1. The Carrier violated the established practice, understanding and provisions of the Clerks' Agreement, particularly the Scope Rule, Rules 4-A-1 (b), 4-A-7, 5-C-1, 9-A-1, 9-A-2, among others, Memorandum of Understanding No. 2 and Agreement 47, when it assigned established Chauffeur work to an outside firm whose employes have no seniority rights and are not covered by the Scope of the Clerks' Agreement or the provisions of the Railway Labor Act.

2. This work shall be returned to the Employes covered by the Scope of the Clerks' Agreement upon whose behalf the Agreements were made in accordance with the provisions of the Railway Labor Act to perform this work.

3. The Carrier shall pay Chauffeur W. Buckley for each Monday of every week, effective January 13, 1969, and Chauffeur J. Baranovics for each Tuesday and Wednesday of every week, effective January 14, 1969, eight hours' pay at the rate of time and one half for each day thereafter this Chauffeuring work is performed by other than employes covered by the Clerks' Agreement, until such time as the violations are corrected.

4. The Carrier shall pay Chauffeur F. Brasca for each Thursday and Friday of each week, effective January 16, 1969, eight hours' overtime at the rate of time and one half, and for each day thereafter this Chauffeuring work is performed by other than employes covered by the Clerks' Agreement, until such time as the violations are corrected.

EMPLOYES' STATEMENT OF FACTS: There is in effect Rules Agreement effective July 1, 1945 and a newly revised Agreement effective January 1, 1965, which the Carrier has filed with the National Mediation Board in accordance with Section 5, Third (e) of the Railway Labor Act, and also

The Employes have filed claim in behalf of three chauffeurs, alleging that by its actions as described above, the Carrier has violated the Clerks' Agreement and deprived the Claimants of earnings.

It is in this posture that this dispute comes to your Honorable Board for adjudication.

(Exhibits not reproduced.)

OPINION OF BOARD: The claim alleges that the Carrier violated established practice, understanding and provisions of the Clerks' Agreement when it assigned established Chauffeur work to an outside firm.

The record shows that, in its modernization program, the Carrier obtained, in the latter part of 1968, a number of new cars, referred to as Type M-1 (Metropolitan cars). Chemical toilets are built into one of the two "married pairs" of the M-1 cars. At least once each 24-hour period each such toilet must be emptied, flushed and re-supplied with chemical material. The Carrier contends that it had neither the equipment nor the employe classification with the skill to perform such work; that work of this type had never been performed on the property of the Carrier before, and, in view of these facts, the Carrier decided to contract the work of servicing the toilets to an outside firm skilled in this type of work.

The record in the case is voluminous. However, it is clear that the servicing of the chemical toilets on the M-1 cars is an entirely new function on the Carrier's property and had never been performed prior to the Carrier acquiring the cars. It cannot, therefore, be held to be work within the scope of the Agreement dated January 1, 1965. Under the circumstances it was not a violation of the Clerks' Agreement for the Carrier to contract for its performance.

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 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 20th day of November 1970.

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