

Award No. 18465
Docket No. CL-18733

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Robert M. O'Brien, Referee

PARTIES TO DISPUTE:

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

**BURLINGTON NORTHERN INC.
(Northern Pacific Railway Company)**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6767) that:

(1) The Carrier violated the rules of the current Clerks' Agreement, effective July 1, 1963, when it:

(a) Instructed and permitted drivers of the Northern Pacific Transport Company to perform the work of checking and warehousing L.C.L. freight at Olympia, Washington, and

(b) Instructed and permitted the Agent at Olympia, Washington, to perform all work connected with freight claim inspections at Olympia, Washington; and

(c) Instructed and permitted the Agent at Olympia, Washington, to assist clerical employees in performing general accounting and clerical work.

(2) The Carrier shall now compensate B. L. Maher at the Clerk-Warehouseman's rate on March 17, 1969 and each subsequent workday occurring in the workweek extending from Monday through Friday until the practice described in Section 1 is discontinued.

EMPLOYEES' STATEMENT OF FACTS: B. L. Maher has established a Class "A" seniority date on the Tacoma Division as of October 2, 1962. At the time this claim arose, B. L. Maher was in the status of a furloughed employe at Olympia, Washington, having notified the Carrier in accordance with Rule 16 of the July 1, 1963 Clerks' Agreement, reading as follows, of his desire to perform extra and relief work at Olympia, Washington:

"Furloughed Employees

Rule 16. (a) The Railway Company shall have the right to use furloughed employees to perform extra work, and relief work on reg-

On June 26, 1969 the General Chairman appealed this claim to the Assistant Vice President-Labor Relations, the highest officer designated to receive appeals. This claim was declined by the Assistant Vice President on June 26, 1969. Subsequently, conference was held between the General Chairman and Assistant Vice President on several occasions, from which the matter could not be resolved.

OPINION OF BOARD: This Claim involves two allegedly distinct violations of the July 1, 1963 Clerk's Agreement. First, on February 13, 1969, the Northern Pacific Transport Company, a wholly owned subsidiary trucking company of the Carrier changed its method of delivering freight shipments at Olympia, Washington. Commencing with that date, freight shipments were handled in a highway van daily from Tacoma to Olympia. Upon arrival at Olympia, the van would be parked at a warehouse of the Carrier and the freight shipments were unloaded into the warehouse by the truck drivers, who then sorted them and loaded them into a truck for delivery to consignees. The truck drivers were not covered by the Agreement.

In addition, Claimant alleges that the Agreement was violated when the Agent at Olympia, admittedly not covered by the Agreement, performed work of inspecting damaged freight and clerical work incident to such inspections. It is further claimed that the Agent assisted clerical employees in general accounting and clerical work. All the foregoing, Petitioner contends, is work historically performed by employees covered by the Clerk's Agreement and that Carrier arbitrarily and unilaterally removed this work from the Scope of the Agreement, thereby depriving Claimant, a furloughed employee at the time, of the opportunity to work the positions in question.

Carrier contends that the movement of the freight in question was and always has been trucking company, not rail business and that the warehouse in question was an abandoned warehouse of Carrier, no longer utilized for rail shipments. Furthermore, the work performed by the Agent at Olympia has at least for the past twelve years been performed by him; it was never work exclusively reserved to employees of the Organization.

Petitioner admits that the Scope Rule in question, relied on in support of its claim, is general in nature and that it does not delineate the work encompassed by the positions for which the rules have been negotiated. It is now settled by a long chain of Awards that under such circumstances, it is necessary to look to past practice, tradition and custom to ascertain whether the work in question is reserved exclusively to employees covered by the Agreement. Awards 17721, 12841, 7216. Where the prevalence of such practice is challenged, the burden is on the Claimant to establish its existence. Awards 17721, 14944, 16371.

It is the opinion of the Board, that Claimant has failed to satisfy this burden. It cannot be said, from a thorough reading of the record, that the work in question has been performed by employees covered by the Clerk's Agreement consistently and exclusively over so substantial a period of time as to establish in the Organization an exclusive right to the work in question. It is axiomatic that Carrier cannot unilaterally remove work covered by an agreement, collectively negotiated by the parties. However, the Organization failed to prove that the work in question belonged exclusively to it. The record is devoid of competent evidence necessary to substantiate the claim.

The Claimant has alleged that shipments of merchandise processed in a **railroad warehouse** (emphasis ours) and the inspection of **damaged freight**

and the preparation of reports incident thereto as well as the performance of general accounting and clerical work is work traditionally performed by employees within the scope of the Clerk's Agreement. The factual history as to whether the warehouse in question was abandoned or was being used for railroad business is in conflict. We are unable to resolve this conflict from a reading of the record. Consequently, we will refrain from passing judgment on whether the result would be different if it was proven that the warehouse in question was being used by Carrier for railroad business at the time of the alleged contract violations.

Consequently, the claim will 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.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 31st day of March 1971.