

Award No. 18600
Docket No. CL-18682

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 EMPLOYES**

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

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6748) that:

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

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

(b) Instructed and permitted the Agent at Aberdeen, Washington, to assist clerical employes at Hoquiam, Washington, in making waybill corrections, transit work and maintaining demurrage records.

2. The Carrier shall now compensate C. M. Urych at the OS&D Clerk's rate on October 28, 1968 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: C. M. Urych has established a Class "A" seniority date on the Tacoma Division as of April 6, 1961. At the time this claim arose, C. M. Urych was in the status of a furloughed employe at Aberdeen, Washington, having notified the Carrier in accordance with Rule 16 of the July 1, 1963 Clerks' Agreement, reading as follows, of her desire to perform extra and relief work at Aberdeen and Hoquiam, Washington:

"Furloughed Employes

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

sumed approximately three hours per day in assisting clerical employees at Hoquiam.

Claim has been presented in behalf of C. M. Urych for payment of eight hours per day on October 28, 1968 and each subsequent workday occurring during the period Monday through Friday until the practice herein described is discontinued, which claim has been declined by the Carrier.

CARRIER'S STATEMENT OF FACTS: On December 23, 1968, the Division Chairman wrote to Superintendent, Tacoma Division, presenting a claim in behalf of Mrs. C. M. Urych, furloughed clerk, Aberdeen, Washington, for payment of eight hours at pro rata rate for October 28, 1968 and each succeeding day until claim is disposed of, alleging Mr. Sinclair, Agent at Aberdeen, was being used by the Carrier four hours per day performing clerical work in connection with freight claim inspection at Aberdeen and three hours per day at Hoquiam Freight Office doing transit work. On December 30, 1968, the Tacoma Division Superintendent wrote the Division Chairman declining this claim.

On February 14, 1969, the General Charman of the BRAC appealed to General Manager J. O. Davies the claim presented in behalf of Mrs. Urych. On March 17, 1969, the appealed claim was declined by General Manager J. O. Davies.

On March 20, 1969, the General Chairman of the BRAC appealed to the Office of Assistant Vice President-Labor Relations the claim presented on behalf of Mrs. Urych. On April 8, 1969, the appealed claim was declined and subsequently conferences were scheduled and held. Copies of the correspondence are attached as Carrier's Exhibit "A".

(Exhibits not reproduced.)

OPINION OF BOARD: The claim involves an alleged violation of the July 1, 1963 Clerks' Agreement. When the claim was filed, Claimant was in the status of a furloughed employee at Aberdeen, Washington, having notified the Carrier in accordance with Rule 16 of the Agreement of her desire to perform extra and relief work at Aberdeen and Hoquiam, Washington. The Agent at Aberdeen is a supervisory agent not covered by the applicable Agreement. He performs the work of inspecting damaged freight shipments as well as performing all clerical work incident to such inspections, and prior to December 15, 1968 assisted clerical employees at Hoquiam in making waybill corrections, transit work and maintaining demurrage records.

Petitioner contends that the work in question is representative of the traditional work at a station performed by employees included within the scope of the Clerks' Agreement, thus when Carrier permitted the Agent to perform this work, this action resulted in the unilateral removal of work from the Scope of the Agreement.

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 well established by Awards of this Board too numerous to mention, that under such circumstances it becomes necessary to look to past practice,

tradition, and custom to determine whether the work in question is reserved exclusively to employees covered by the Agreement. Where the prevalence of such practice is challenged, as it is in the case at bar, the burden is on the Claimant to establish its existence.

Petitioner has failed to satisfy this burden. It cannot be said, from an examination of the record, that the disputed work has been performed by employees of the Clerks' 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. The record is devoid of competent evidence necessary to substantiate the claim. Conversely, Carrier avers that the work in question performed at Aberdeen has been performed by the Agent there since 1945. If Petitioner had evidence to rebut this allegation, it failed to produce it, therefore it cannot be said that employees covered by the Clerks' Agreement have exclusive right to perform this work.

This decision is consistent with recent Award 18465, involving the same parties and Agreement and essentially the same 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: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of June 1971.