



Award No. 18610
Docket No. CL-18832

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Robert A. Franden, Referee

PARTIES TO DISPUTE:

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

BROOKLYN EASTERN DISTRICT TERMINAL

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6819) that:

1. The Carrier violated the established practice, understanding and provisions of the Clerks' Agreement, particularly, the Scope Rule, Rules 12, 25, 48 and 50 among other when it previously abolished a clerical position and assigned, permitted, ordered or required the clerical duties of four (4) or more hours to be performed by employees not covered by the Scope of the Clerks' Agreement.

2. The Carrier shall pay Storekeeper J. Mellett at the rate of time and one half for four (4) hours of each day effective March 12th, 1969 and for each day thereafter until such time the violations are corrected and the work performed by employees covered by the Scope of the Clerks' Agreement.

EMPLOYEES' STATEMENT OF FACTS: There is in effect a Rules Agreement effective April 1, 1938, and revisions of September 1, 1949 and July 7, 1955, and the National Agreements signed at Chicago, Illinois, on August 21, 1954 and June 5, 1962, November 20, 1964, December 15, 1966 and December 28, 1967, covering Clerks, Chauffeurs, Checkers, Yard Clerks, Watchmen, Freight Handlers, etc., between this Carrier and this Brotherhood. The Rules Agreement will be considered a part of this statement of facts. Various Rules and Memorandums may be referred to from time to time without quoting in full.

This dispute involves the arbitrary abolishment of a Storeroom Clerk's position which work was and still is in effect and the Carrier deliberately assigning and transferring the work to Employees outside the Scope of the Clerks' Agreement, in direct violation of the Scope of the Clerks' Agreement.

The disputed work and position several years prior to its abolishment was advertised to the clerical employees as follows:

"During the appeal hearing, I brought out the fact that during the period Clerk Rodonski was located in the storehouse office and going back for twenty years, each foreman made up his own individual time sheet covering the men under his jurisdiction. Foremen enscribed thereon the hours worked by each individual and the distribution of his time as to what amount of time was spent on each particular job.

This time sheet was turned in by the foreman to Clerk Rodonski who in turn transposed this information on to another time sheet, extended the hourly rate of pay to a daily gross, and dispatched this time sheet to clerk in General Office for further processing. This was standard procedure followed out by foremen or supervisors of each department.

I believe it was clearly brought out that since the abolishment of Clerk Rodonski's position within the structure of our agreement, we rearranged and distributed the work to employes covered by your Scope Rule. The only change made was to formulate a new form for the supervisors and foremen to show the same hours worked by each individual and the distribution on to another form for extension was eliminated, and the original time sheet form is dispatched direct to clerk in General Office who extends the hourly rate of pay to a daily gross and then further processes.

This clerk in the General Office is covered by the Scope Rule.

I'm sure you are cognizant of hte many Awards upholding the right of supervisors to perform so-called clerical work incident to the primary duties of their positions."

Copy of Mr. Cutter's letter of December 17, 1969 is attached hereto and made a part of this submission as Carrier's Exhibit No. 1.

Thus the remaining work of Clerk Rodonski's position was transferred to the Clerk in the General Office except for the unnecessary step of transposing information on to another form which was eliminated. A modified version of the old form was instituted which eliminated such work. The position of Clerk in the General Office is within the scope of the Clerks' Agreement on the property and no work has been removed therefrom.

(Exhibits not reproduced.)

OPINION OF BOARD: In 1967 a decline in business forced a reduction in personnel at the Brooklyn Eastern District Terminal. At that time it was understood that several positions would be abolished but that the Clerks' work remaining from the abolished positions would be assigned to employes covered by the Clerks' Agreement in compliance therewith.

One of the positions abolished was that of Clerk Rodonski who was assigned to the Storehouse office under the jurisdiction of Storekeeper J. Mellett, the Claimant in the instant matter.

The Organization alleges that the following duties of Claimant Rodonski's abolished position were assigned to employes outside of the Scope of the Clerks' Agreement.

1. Daily distribution of labor from individual employes in Carpenter Shop, Machine Shop, Storeroom and Track Department. This involves assigning hourly rate to job performed and distributing by hours to what worked on that monies spent on labor, can be assigned to proper ICC accounts.

2. Receiving and giving out materials from storeroom and keeping records of same.

3. Making out requisitions and phoning in orders on materials being purchased from suppliers.

4. Answering phone and taking care of incidental storeroom clerks work.

Following is the Scope Rule of the Agreement:

ARTICLE I

Rule 1 — Scope and Work of Employes Affected.

These rules shall govern the hours of service and working conditions of all employes engaged in the work of the craft or class of clerical, office, station and storehouse employes. Positions or work coming within the scope of this agreement belong to the employes covered thereby and nothing in this agreement shall be construed to permit the removal of positions or work from the application of these rules, nor shall any officer or employe not covered by this agreement be permitted to perform any clerical, office, station or storehouse work which is not incident to his regular duties, except by agreement between the parties signatory hereto.

Whenever any mechanical device used for handling, duplicating, recording, transcribing, transmitting or receiving written, typed, printed, graphic or vocal communications, reports or records or any combination of the same within the same or between different cities is utilized for the accomplishment of work of the character performed by employes subject to the Scope of this agreement, such mechanical devices shall be operated by employes covered by said agreement.

Employes not subject to this agreement will not be permitted or required to combine the performance of work subject to this agreement with the operation of teletype machines as a separate or simultaneous and single function. This rule shall not apply to positions involving the operation of mechanical devices used exclusively for transmitting or receiving messages now transmitted or received by telegraphers.

For the purposes of this agreement, the craft or class of clerical, office, station and storehouse employes is divided into the following groups:

Group 1. Clerks:

(a) Clerical Workers

(b) Machine Operators

Group 2. Other office, Station and Storehouse Employees, such as Foremen, Assistant General Foreman, Boat Dispatchers, Checkers, Seal Clerks, Yard Clerks, Receiving and Delivery Clerks and all other employes performing analogous service.

Group 3. Crane Operators, Chauffeurs, Callers or Loaders, Industrial Truck Operators, (Station and Storehouse) Janitors, Office Cleaners, Station Cleaners, Stowers or Stevedores, Tractor Operators (Station and Storehouse) Truckers, Watchmen, Freight Handlers (Station and Storehouse) and all other employes performing analogous service.

Definition of Clerk

(a) Employes who regularly devote not less than four hours per day to the writing and calculating incident to keeping records and accounts, writing and transcribing letters, bills, reports and statements, handling of correspondence, and similar work and to the operation of typewriters, adding and calculating machines, bookkeeping, accounting, time-keeping, and statistical machines, dictaphones, key punch, teletype (except teletypes used exclusively in the transmission of messages and reports of records and located in offices which are equipped with telegraph facilities) and all other similar equipment or devices used in the performances of clerical work or in lieu of clerical work, shall be known as clerks. This definition will also include Chief Clerks, Storekeepers, Yard Supervisors, Assistant Chief Clerks, Office Machine Operators, Telephone Switchboard Operators and Messengers.

(b) Clerical work occurring in a spread of eight or nine hours will not be assigned to more than one position not classified as a clerk for the purpose of keeping the time devoted to such work by any one employe below four hours per day.

(c) The foregoing definition shall not be construed to apply to:

1. Employes performing manual work not requiring clerical ability.

NOTE: 1. Employes designated in Group 1 and Group 2 are separated for occupational classification and seniority purposes only.

NOTE: 2. Positions or work within the Scope of this Agreement belong to the employes covered thereby and nothing in this Agreement shall be construed to permit the removal of positions or work from the application of these rules, except in the manner provided for in Rule 50.

The Carrier replied that the time keeping duties (item #1 above) were rearranged so as to eliminate some unnecessary duplication and that the work was still being performed by Clerks in the main office. They contend that the preparation of forms which show the time worked by men and the num-

bers of hours spent on each particular job has been done by the foreman for twenty years.

As to point two through three above the Carrier defended on the basis that the work described has always been performed by various foremen. The Organization took issue with the defense of the Carrier in its reply to the denial of the claim on the property.

In an attempt to substantiate their claim the Organization requested a hearing, the presence of material witnesses, a stenographer to record the proceedings and the production by the Carrier of all records relating to the abolished Clerk-Storehouse and Maintenance Department position. The meeting was granted but the Carrier requested that the parties keep their own notes in lieu of a stenographer and that the Organization bear the expense of the attendance by employes as witnesses. The Carrier did not produce the records as requested by the Organization.

At the hearing three foremen not covered by the Clerks' Agreement testified that they or persons under their supervision are now filling out time and distribution reports and signing for and distributing material from the Storehouse. They admitted that this work was formerly performed by the Clerk-Storehouse and Maintenance Department before the position was abolished. There is on record a letter from one Thomas F. Kelly who attended the meeting stating that the above testimony was given and that the work described was previously performed by the Storehouse Clerk. The Carrier stood on its denial and has included nothing in the record to rebut this testimony.

An examination of the record leads this Board to find that the work which is the subject of this dispute is Clerk's work which is covered by the Scope Rule of the Clerks' Agreement. We further find that a preponderance of the evidence establishes that the work has been transferred to employes outside the Scope of said Agreement in violation thereof. We will sustain the claim as to part 1.

The record is not clear as to the amount of overtime lost by Claimant due to the violation of the Agreement. The Carrier alleges that the work that was transferred after Claimant Rodonski's position was abolished was less than four hours. The Organization has not supported its claim for four hours each day effective March 12, 1969 with competent evidence. Any finding this Board would make as to the amount of overtime lost would necessarily be arbitrary. Claimant is entitled to be compensated at the punitive rate for overtime work actually lost. We will remand part 2 of the claim to the property to ascertain the facts and hopefully determine the matter. In the event the parties are unable to concur a record should be established on the property and the case brought back to this Board for interpretation and application in accordance with the findings as to part 1 of 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 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 violated.

AWARD

Part 1 of claim sustained. Part 2 of claim remanded to the property.

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.