



Award No. 18653
Docket No. CL-18855

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 EMPLOYEES**

UNION PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6789) that:

1. The Union Pacific Railroad Company, hereinafter referred to as the Carrier, violated and continues to violate the rules agreement then and now in effect between the Union Pacific Railroad Company and the Class and Craft of employees represented by the Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees commencing Tuesday, December 10, 1968, when the work of performing freight damage inspection and making reports therefore at Andover Park and Tukwila, Washington was removed from the position of Claims Inspector at Seattle, Washington and turned over to the Agent at Kent, Washington, said employee not being an employee exclusively of the Union Pacific Railroad Company or a member of the Brotherhood of Railway, Airline and Steamship Clerks, the employees to whom the work belonged by virtue of past practice and of the rules of the Clerks' Agreement.

The rules violated were Rule 1 (Scope), Rule 2 — Seniority, Rule 6 — Exercise of Seniority, Rule 8 — Promotion, Assignments and Displacements, Rule 38 (c) — Overtime, Rule 39 (a) — Notified or Called.

2. Carrier shall now be required to return the work to the members of the Brotherhood of Railway, Airline and Steamship Clerks holding seniority on the Union Pacific Railroad Company Seniority Roster No. 85-1 covering Stations — Umatilla and west to Seattle. (See Page 6 of that section of the Agreement, revised effective July 15, 1967; namely, those Clerks classified as Claim Inspectors at Seattle, Washington (Job No. 24)

3. Carrier, as penalty for removing work from under the Clerks' Agreement without proper agreement as provided for in the effective Clerks' Agreement dated May 1, 1955 and revised July 15, 1967, shall now be required to compensate Claimant, Clerk O. T. Fox, incumbent

- H Carrier's letter dated October 13, 1969 in response to the Organization's letter of October 9, 1969.
- I Carrier's letter dated February 17, 1970 concerning matters involved in this claim.
- J Organization's letter dated February 27, 1970 dealing with this particular claim.
- K Carrier's letter dated March 17, 1970 reaffirming prior decisions.

(Exhibits not reproduced.)

OPINION OF BOARD: The record shows that Kent, Washington, is a joint Union Pacific Railroad-Milwaukee (CMSTP&P RR) Agency. Near Kent there is an industrial complex known as the Tukwila-Andover Park Area.

The Carrier states that Andover and Tukwila are non-agency stations under the jurisdiction of the joint agent at Kent.

On December 9, 1968, the Union Pacific Assistant Superintendent issued the following instructions:

"Mr. S. Belcheff, Jt. Agent — Kent
Mr. D. K. Lloyd — Seattle

cc — Mr. J. A. McCullough — Seattle

Various correspondence regarding claim damage inspections Andover-South Center area.

It is felt that inasmuch as Kent station has handled this area, that battery shipments by trucks out of Seattle should also be handled by Kent, regardless whether damage claims are received through the Seattle freight office, or otherwise. Therefore, Agent Belcheff, Kent, will secure the necessary data from Seattle to complete the claim inspection forms covering this particular traffic.

Agent Lloyd will arrange to provide Kent with sufficient information to complete inspection reports, etc. C-261."

On December 26, 1968, the representative of the Petitioner initiated claim alleging a violation of the Agreement by the Agent at Kent performing Claim inspection work at Andover Park-Tukwila, which work, he contended, had been handled by the Seattle Claim Inspector's office in the past.

The Petitioner in its submission relies primarily upon the Scope and Seniority rules of the Agreement. The Scope rule is general in character in that it does not delineate work. The Board has held in innumerable decisions that under a general type scope rule, the Petitioner must prove by probative evidence that the work involved belongs to the Claimants exclusively by past practice, tradition and custom, systemwide. See Awards 14751, 14944, 16371, 16544, 16550, 16624, 16832, 17032, 18144, among others. In the present case, the Petitioner has failed to meet the burden of proving an exclusive right to

his immediate jurisdiction, a claim was initiated by the Division Chairman, Mr. L. L. Sorenson, under date of December 26, 1968, in the following form:

"Wish to file claim on behalf of Clerk O. T. Fox, for two (2) hours each day commencing with Dec. 10, 1968, at overtime rate of Claim inspector Job #24, and continuing until a correction of the violation is made at Seattle.

Under date of Dec. 9, 1968, Asst. Supt. Chantry issued instructions that the Agent at Kent, Wash. perform claim inspectors work at Andover Park-Tukwila, Wash. This work had been handled by the Seattle Claim inspectors office in the past.

Kent is a joint agency and the Agent is a Milwaukee telegrapher, and further, Andover Park, Tukwila, is not in the limits of Kent.

Seattle Claim inspectors have, in the past, made all Forwarding Co. Inspections, and as a matter of fact, have made all inspections on cars which terminate in Seattle and the freight truced out to the area in question.

Would appreciate your investigation of this matter advising when time as claimed will be allowed and further when the situation will be straightened out and the work returned to the proper craft."

The claim, as above presented, was handled on the property in the usual manner, including the rules placed in issue and the position of the parties to the dispute and which are set forth in an exchange of correspondence, appended hereto and identified as follows --

CARRIER'S

EXHIBIT DESCRIPTION

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| A | Supervisor of Wage Schedules' letter, dated February 13, 1969, on response to the Division Chairman's letter of December 26, 1968. |
| B | Letter dated February 18, 1969 over the signature of Mr. N. A. Hertel, General Secretary-Treasurer, BRAC. |
| C | Letter dated March 26, 1969 over signature of Mr. F. A. Hallberg, General Chairman, BRAC, appealing claim by and in behalf of O. T. Fox. |
| D | Carrier's letter dated April 18, 1969 to General Chairman Hallberg, outlining position of the Carrier. |
| E | Carrier's letter dated May 8, 1969 to General Chairman Hallberg, setting forth the further position of the Carrier. |
| F | Carrier's letter dated July 14, 1969 to General Chairman Hallberg, affirming prior decisions of the Carrier following discussion of the claim in conference. |
| G | Organization's letter dated October 9, 1969 in response to the Carrier's letter of July 14, 1969. |

the work complained of under the Scope rule of the Agreement and the claim will be denied for that reason.

In our decision we have not considered issues that were not raised by the parties in the handling of the dispute on the property.

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 July 1971.