

Award No. 19193
Docket No. CL-19240

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**

KANSAS CITY TERMINAL RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6917) that:

- (1) The Carrier violated the Agreement between the parties when on August 7, 1969, it removed work from the Scope of the Clerks Agreement and assigned same to another craft, i.e. Security Officers.
- (2) That the work now be restored to the Clerks jurisdiction, and,
- (3) That Claimant, F. P. Swenton or his successor be paid two (2) hours overtime each day at time and one-half rate of his regular position as Yard Clerk, beginning August 7, 1969 and continuing until the work is properly restored to the Clerks jurisdiction.
- (4) That the Carrier be required to pay six (6) percent interest compounded annually on the money due Claimant until restitution is made.

EMPLOYEES' STATEMENT OF FACTS: Preceding the date of claim, there were two (2) positions as Yard Clerk assigned to the Mill Street Yard Office on the 3:00 P. M. to 11:00 P. M. shift. One of the positions was occupied by a Yard Clerk G. E. Blair, the principal duties of which were the usual checking and reporting of cars handled and clerical duties in connection therewith. The clerical duties included the writing up of Bills of Lading and delivering same to the Union Pacific Team Track office, some distance away. The occupant of this position was paid mileage each day for delivery of the bills to the Union Pacific. The second position assigned during the same hours had as its prescribed duties "checking cars at Mill St., assisting afternoon clerk and making check of all cars at Proctor and Gamble." On or about July 21, 1969, this position was abolished and the entire work load was placed on the remaining position held by Employee Blair. When the work load of the Blair position proved too burdensome, the Carrier assigned Special Agents or Security Officers as they are defined on this property, to pick up the Bills of Lading and deliver them to the Union Pacific Team Track office, thus relieving the Clerk of this work.

The Local Chairman, Mr. B. D. Lynch, filed claim on August 29, 1969 for two (2) hours overtime for the occupant of the day shift yard clerk position, on

the theory that it was Clerks work and since the Carrier found it impractical to assign it to Clerks on the 3:00 P. M. to 11:00 P. M. shift, it could only be performed by holding the 7:00 A. M. to 3:00 P. M. Claimant-Clerk two (2) hours overtime. The claim further alleged that the work of delivering the Bills of Lading which was work that was an integral part of the Mill Street Yard Clerk position, and had been performed exclusively by them for over 20 years, since the practice was adopted, was improperly assigned to Security Officers outside the Clerks craft. (See Employees' Exhibit No. 1.)

Mr. Roy E. Barnes, Auditor, denied the claim on November 28, 1969, without benefit of conference as requested by the employees. (Employees' Exhibit No. 2.)

Timely appeal was taken by the General Chairman to the Manager of Personnel the highest officer of the Carrier to whom appeal may be made on January 21, 1970. (Employees' Exhibit No. 3.)

Decision was rendered March 11, 1970 denying the claim, without benefit of conference as requested by the Employees. (Employees' Exhibit No. 4.)

The one and final conference was held November 3, 1970 at request of the Employees and the Carrier reaffirmed its position at that time, creating a dispute unresolved between the parties and referred to this Board for disposition.

(Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS: Three yard clerks are regularly assigned at Carrier's Mill Street Yard — one on each shift, 7:00 A. M. to 3:00 P. M., 3:00 P. M. to 11:00 P. M. and 11:00 P. M. to 7:00 A. M. Claimant E. P. Swenton was assigned to the 7:00 A. M. to 3:00 P. M. yard clerk position with rest days Saturday and Sunday. Duties of the 7:00 A. M. to 3:00 P. M. yard clerk are checking and reporting freight cars handled and clerical duties in connection therewith. One of the clerical duties referred to is to sign bills of lading that were prepared and delivered to Mill Street by the shipper, for later transmittal to the Union Pacific Team Track Office located approximately 3.3 miles from the Mill Street Yard Office. Transmittal of the bills of lading is performed each day at approximately 6:00 to 6:15 P. M. by a Kansas City Terminal Security Officer.

Claim of F. P. Swenton for two hours overtime five days each week, beginning August 7, 1969, account not assigned the task of delivering bills of lading to the Union Pacific during the tour of the 3:00 P. M. to 11:00 P. M. yard clerk assignment, was progressed through the usual channels on the property and was properly denied by the final appeals officer on March 11, 1970. (Carrier's Exhibit No. 1)

(Exhibits not reproduced.)

OPINION OF BOARD: The claim arose when Carrier assigned Security Officers to pick up bills of lading at the Mill Street Yard Office and deliver them to the Union Pacific Team Track Office. The Organization contends that this work has previously been performed by Clerks historically and customarily in the past. The Organization relies on the Scope Rule, though admitting that it is general in nature. They contend that the work is reserved exclusively to employees of the Clerk's Craft.

Carrier denies that the Clerks have an exclusive right to the disputed work and maintains that when Security Officers were assigned to delivering

bills of lading to the Union Pacific this did not violate the Scope Rule of the applicable Agreement. Carrier further denies that this work has been exclusively performed by Clerks.

This Board finds that the contentions of the Carrier are well taken. The Scope Rule is admittedly general in nature, and consequently the burden of proving exclusivity rests with the Petitioner to show that the work herein has been exclusively performed by clerical employees, by practice, custom, and tradition. The Organization has failed to meet this burden of proof, and therefore 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 12th day of May 1972.