

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19534  
Docket Number CL-18215

William M. Edgett, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,  
( Freight Handlers, Express and Station Employees

PARTIES TO DISPUTE: (

(St. Louis Southwestern Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (CL-6581)  
that:

(1) Carrier violated, and continues to violate, the Clerks' current Agreement beginning on or about September 9, 1967, when it instructed and required Carmen at Tyler Yard to handle Company mail and/or baggage between the Yard Office and cabooses.

(2) That Messenger Phillip Edwards be paid for two additional hours time each Monday, Tuesday and Friday; Relief Messenger W. C. Anderson be paid for two additional hours time each Wednesday, and furloughed or unassigned employee Calvin Smith be paid for two additional hours time each Thursday when Carmen performed a part of their mail handling duties beginning with September 22, 1967, and for subsequent dates until the violation is corrected.

(3) That Mail-Duplicating Clerks A. L. Turner and L. A. Wright each be paid for two hours additional time for each day Carmen performed a part of their mail handling duties, effective September 22, 1967, and likewise for each subsequent date of the violation until corrected.

(4) That Carrier's records be made available and checked for determining the amount due each Claimant.

OPINION OF BOARD: About September 9, 1967 Carrier discontinued the operation of a bus between Tyler and Pine Bluff. It had been used to transport company mail and it was then necessary to make other arrangements. Carrier began to use freight cabooses to carry the mail. It had Carmen take the mail to and from the Yard Office and the caboose.

The claim alleges a violation of the Scope Rule. Therefore Carrier, conscious of a very large number of decisions of this Board, took the position that Clerks have not exclusively handled mail on the property.

The weight of decision attached to the "exclusivity" theory is overwhelming. Claimants forcefully urge several theories to avoid its affect. They point out that the Carmen's Agreement does not contain language which shows an intent to assign them mail handling. It is true that the Carmen's Agreement does not support Carrier's position. This does not advance the claim however. The

silence of the Carmen's Agreement on the subject is of no real significance to a determination of the claim. The cases have held that under a general scope rule a claimant must prove system-wide exclusive assignment. This, it is true, is a particularly onerous burden when clerical work is involved. No attempt was made to meet it and the fact that the Carmen's Agreement does not spell out mail handling does not aid claimants.

Of course it is not necessary to prove exclusive system-wide assignment unless the Scope rule is "general". Claimants allege that the rule on this property obviates the need to examine exclusive assignment. The Board, however, has ruled to the contrary. In order to properly disregard these rulings it would be necessary to find that they were clearly wrong. We have no basis for such a finding on this record.

Claimants point out that in earlier cases the Board discussed work assignment without considering the exclusive assignment problem. In this connection they point out that in order for work assignment to another craft to be supportable it must be incidental to the duties of the other craft. Here, it is pointed out, the handling of mail is in no way incidental to the Carmen's duties. This truth, however, does not serve to dispose of the need to prove exclusive system-wide assignment. That requirement is not grounded in a consideration of the correctness of the assignment to the craft performing the work. Its basis lies in the holding of the myriad of cases which state that the right to exclusive performance of work, based on practice, can only be found when the practice shown is system-wide and exclusive.

What Claimants are really arguing is that the Board has developed a rule of evidence which it is impossible to meet. Certainly it is a difficult, and perhaps is, an impossible burden. However, the Board has, quite correctly held many times, that its prior decisions are entitled to great weight. The Board's decisions on this property, between these parties, have held this Scope rule to be "general" and required a showing of exclusive system-wide assignment in order to claim an exclusive right to work. That burden has not been met by claimants and a denial award is therefore required.

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 Employee involved in this dispute are respectively Carrier and Employee within the meaning of the Railway Labor Act, as approved June 21, 1934;

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That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

E. A. Kellen  
Executive Secretary

Dated at Chicago, Illinois, this 20th day of December 1972.