

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19551
Docket Number CL-18101

William M. Edgett, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
(
(The Western Pacific Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6543)
that:

1. The Carrier violated the rules of the Agreement extant between the parties when it removed the work of unlocking the entry door to the Sugar Shed at Oakland, California from employees covered by the Agreement and permitted and/or required this duty to be performed by employees outside the scope and operation of the Clerks' Agreement.

2. Floyd D. Hillyer be allowed a minimum call for September 9, 1967 account Yardmaster Hamlin performing Clerk's work in unlocking Sugar Warehouse at Oakland Mole for switching between 4:30pm and 6:00pm that date.

3. Mr. M. R. Whittaker and/or his successors on the position of Bill-Interchange-Yard Clerk be compensated for a minimum call for the violation on Tuesday, October 3, Wednesday, October 4, Thursday, October 5, Saturday, October 7, 1967 and on each day thereafter when this work was required and is performed by the Yardmaster.

OPINION OF BOARD: Carrier issued the following memorandum on August 26, 1967:

"Oakland, California
Aug 26, 1967

File A-515

All Chief Yard Clerks
All Yardmasters

Effective immediately, there is a key available on the Chief Clerks desk to unlock the entry door at the sugar dock. If and when it becomes necessary for this key to be used, it will be the responsibility of the Chief Clerk on duty at the time to unlock the door and see that unauthorized persons do not have access to the key.

/s/ R. Smalley
Agent"

It amended these instructions on August 29, 1967, as follows:

"Oakland, California
August 29, 1967

File A-515 (Amendment to
my instructions of August
26, 1967)

All Chief Yard Clerks
All Yardmasters

Effective immediately, this amendment is made to my prior instructions of August 26, 1967, regarding the key to the Sugar Dock: the Bill Interchange Yard Clerk will be used to unlock the sugar dock entry door for the switch crew when instructed to do so by the Chief Clerk or the Yardmaster. It will still be the responsibility of the Chief Clerk on duty to see that unauthorized persons do not have access to the key.

/s/ R. Smalley
Agent"

On the claim dates a Yardmaster unlocked the sugar dock. The Organization asserts that once work has been assigned to a position covered by the Agreement it may not be performed by employees not covered by the Agreement. It cites the Scope Rule and Rule 40 (f). Rule 40 (f) makes provision for handling the assignment of work of abolished positions. It is not relevant to the factual situation involved in this claim.

The Scope Rule of this Agreement has not been viewed by the Board as one which gives the employees the exclusive right to perform work (Awards 10506, 10853, 18416). When this is the case, under well establish principle, it is necessary to look to practice and custom. The Organization makes no claim that it can rely on practice and custom. Its claim to exclusive right is not supported by the language of the Agreement, or prior interpretation of that language by this Board.

The Organization buttresses its argument by reliance on Award No. 91 of Special Board of Adjustment No. 192. That Award dealt with the failure of Carrier to re-establish several Assistant Shop Clerk positions when it reopened a shop which had been closed. The reports which had been prepared by the Clerks were prepared by a Foreman after the re-opening. Special Board of Adjustment No. 192 outlined the employee's argument as follows:

"The employees, in effect, argue that once work is placed under the Clerks' Agreement it cannot be removed therefrom and given to other employees except as provided in Rule 1(c), that Rule 1(c)4 does not stand alone but is interdependent with 1(c) 1, 2 and 3."

Rule 1(c) referred to by the Special Board is similar to Rule 40(f) of the Agreement between these parties. In Award No. 91, Special Board of Adjustment No. 192 limited the application of Rule 1(c) to those factual situations which involved the abolishment of jobs. It said:

"We indicated in our Award in Docket 69 that Rule 1(c) is a limitation on the so-called 'ebb and flow' doctrine. It applies only in situations where a position covered by the Clerks' Agreement is abolished. Under that rule when work is assigned to a given position under the Clerks' Agreement and that position is abolished the work must be assigned in the first instance to a position or positions covered by the Agreement, if one existed at the location. This is true even if the work on the abolished position is incident to and directly attached to the primary duties of another craft or class. This is not to say that work incident to and directly attached to the primary duties of another craft as set forth in Paragraph 4 of Rule 1(c) may not be performed by employees other than clerks but simply that once such work has been assigned to a position covered by the Agreement at a given location it cannot 'flow back' to the class or craft to which the work is incident, if the clerical position is abolished and another position or positions covered by the Agreement exist at the location where the work of the abolished position is to be performed." (Emphasis supplied.)

The claim that the task of unlocking the sugar dock is reserved exclusively to clerical employees must be denied for lack of Rule support.

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;

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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. Killen
Executive Secretary

Dated at Chicago, Illinois, this 10th day of January 1973.