

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19570
Docket Number CL-18300

Clement P. Cull, Referee

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

PARTIES TO DISPUTE: (
(Penn Central Company, New Haven Region

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6595)
that:

(a) Carrier violated the current Clerks' Agreement at New London, Connecticut, Freight Office when on November 1, 1967, it arbitrarily transferred clerical work belonging exclusively to the Clerks' craft and class for the purpose of establishing a new position subject to the terms of another labor agreement.

(b) **The** Carrier shall be required to return the disputed work to the scope of the Clerks' Agreement.

(c) Clerk Mrs. G. C. Keeley and/or her successors shall be compensated \$23.0854 per day **commencing** January 1, 1968, and continuing each day thereafter until Carrier corrects the violations contained herein.

OPINION OF BOARD: Petitioner relies on its Scope Rule. Examination of the Rule reveals it to be general in nature and in order to prevail a showing is required that the work **in** dispute - the portion of the duties of the General Clerk's position remaining after the **abolishment** of that position - was by **custom** and practice exclusively reserved to Petitioner.

The facts giving rise to the dispute are generally undisputed and are as follows: Carrier decided that the vacancy created by the retirement of the fully **excepted** Agent at New London, **Conn.** Freight Office **on September 30, 1967**, should be filled under Carrier's agreement **with Transportation-Communication Employees Union** which includes the position of "Agent -- Freight and Ticket" in its **Scope** Rule whereas Petitioner's Scope does not. On **September 19, 1967** Carrier notified the General **Clerk** employed at the office, who is the Claimant herein and is represented by the Petitioner, that **the** position was **abolished** effective September 30, 1967 because of the **reduced** work load. Said Clerk **notified** Carrier that she would not **exercise** her seniority rights to displace the junior Rate and Waybill Clerk also employed at the office but **would cover vacation and spare work at the office**. There was a delay in **determining the successful applicant for the Agent's position**. Thus,

upon the departure of the Agent on September 30, there remained at the office the General Clerk and the Rate and Waybill Clerk. During the month of October the Rate and Waybill Clerk acted as Agent and the General Clerk covered the Rate and Waybill Clerk's position. With the arrival of the new Agent on November 1, 1967 the General Clerk was furloughed and the Rate and Waybill Clerk resumed his duties. The General Clerk having lost her previously established seniority by declining to exercise her displacement rights acquired a new seniority date of **October 2** while she filled in for the Rate and Waybill Clerk. It is undisputed that had she exercised her seniority she would have had displacement rights to the **Rate and Waybill Clerk's** position, a post that she did not want.

Careful consideration of the record and the contentions of the parties reveals that the essence of the case is that the Claim goes to the fact that the work remaining after the abolishment of the General Clerk's position could not, in the view of the Petitioner, be absorbed by the Agent. We disagree. Carrier violated no agreement rule when it abolished the General Clerk's position. Nor did it violate the agreement when the work remaining, requiring less than 3-1/2 hours a day to perform, was absorbed by the Agent. In this regard note is taken of Rule 1(b) which reads, in relevant part, as follows:

"A 'position' is defined as an assignment for which work exists eight hours a day five days a week."

It is therefore clear that the small amount of work left was not sufficient to justify the maintenance of a "position".

It is also clear from the record that Petitioner has not proved that the work involved was reserved exclusively to it.

Carrier in compliance with its agreement with TCEU recognized the right of that Organization to represent the new Agent at the location when it decided that said position would no longer be excepted from all collective agreements. As we have found that the Agent could absorb the work remaining in the General Clerk's positioner we must find no merit to Claim (a). Having found no merit to Claim (a) we likewise find no merit to Claims (b) and (c), noting that the absorption of the work by the Agent violated no schedule rule in Petitioner's agreement. (Award 14827).

In view of the foregoing it is not necessary to rule on what we consider to be subsidiary contentions raised by the parties.

TCEU was notified of the dispute and declined to make a submission to this Board.

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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 has not been violated.

A W A R D

Claim denied.

NATIONAL RAILROAD **ADJUSTMENT BOARD**

By Order of Third Division

ATTEST: *E. C. Killen*
Executive Secretary

Dated at Chicago, Illinois, this **30th** day of January 1937.