

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number **19800**
Docket Number CL-19563

Frederick R. **Blackwell**, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station **Employees**
PARTIES TO DISPUTE: (
(St. Louis-San Francisco Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (**GL-7044**)
that:

(1) Carrier violated the Agreement between the parties at Birmingham, Alabama beginning August 19, 1970 when it arbitrarily, capriciously and in total disregard of the provisions of the Agreement removed work from the Scope of that Agreement which had heretofore always been by history, custom, tradition and practice assigned exclusively to **employees** of this class and craft.

(2) Carrier shall now be required to **compensate** J. L. Powell and/or his successors beginning August 19, 1970 and continuing on each work day thereafter for one hour each day at the penalty rate of Position No. 74, Train Clerk account violation of the Agreement.

(3) Carrier shall **now** be required to compensate J. M. Bates **and/or** his successors beginning August 19, 1970 and continuing on each work day thereafter Monday through Friday; also 3. A. Battles and/or his successors for each Saturday and Sunday beginning August 22, 1970 for one hour and 30 minutes each day at the rate of Record Clerk Position No. 42 account violation of the Agreement.

OPINION OF BOARD: The claimants assert that **their** agreement was violated when, in August of 1970, approximately **one (1)** hour of clerical work was assigned to the third shift telegrapher who was employed at the same location as the claimants.

On December 1, 1969, **some** months prior to the occurrence giving rise to this claim, the the" existing clerks and **telegraphers'** **seniority** rosters **were** combined under a Clerk-Telegrapher consolidation agreement. Consequently, only one Organization was involved when this claim arose.

Petitioner contends that: 1) the work was not assigned to fill out the telegrapher's assignment; 2) the consolidation agreement of **December** 1, 1969 does not authorize the transfer of work across craft lines; and 3) the disputed work has been exclusively and historically assigned to the clerks. Carrier contends that it **is** well established on this property that clerical work may be used to fill out the **assignments** of telegraphers and that **none** of the disputed work has been performed by telegraphers **on** overtime. Carrier also contends that "In the

negotiations culminating in the December 1, 1969 Agreement, it was understood and agreed that clerks could perform work theretofore performed by telegraphers and telegraphers could continue to fill out the hours of their **assignments on** clerical work." Neither of Carrier's contentions have been contradicted of record by the Petitioner.

As regards Petitioner's first contention, we find as fact on the whole record that the disputed work was assigned to fill out the telegrapher's **assignment**. On the crossing of craft lines, the record contains no evidence **whatever** on this subject so we find no merit in Petitioner's second contention. **The** requisite evidence is likewise lacking in regard to Petitioner's claim of exclusive performance of the disputed work. Prior Awards of this Division have held the scope rule of the Clerks' Agreement on this property to be general in nature. Awards 16356, 15695, 15394, and 14944 among others. The majority of recent Awards hold that in such a case, in order for employees to prevail on claims that work within the scope of their agreement has been improperly assigned to and performed by persons outside the Agreement, the employees must establish by a preponderance of the evidence that the disputed work has historically been performed exclusively by the complaining **employees on** a system-wide basis. (Award 19517, by the present Referee) On the present record we can only conclude that **the** Petitioner has not carried this burden of proof.

We come now to Carrier's contentions. In view of these contentions not being contradicted **or** challenged of record, we conclude that practice on this property permits the Carrier **to** assign the work as it did in this situation. Furthermore, it is well established by Awards of this Board that telegraphers may perform clerical work to fill out their assignments, even where telegraphers and clerks are covered by separate agreements. See Awards 615, 9926, and 13100 among **others**. And finally we observe that nowhere in the record does the Petitioner attempt to show that the past practice on the property was changed, or that the foregoing Awards were made inapplicable, by the consolidation agreement of December 1, **1969**.

In view of the foregoing we shall deny the claim.

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 th** dispute involved herein; and

Award Number **19800**
Docket Number CL-19563

Page 3

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 **20th** day of **June 1973**.