

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19817
Docket Number CL-19959

C. Robert Roadley, Referee

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

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-7179)
that:

1. Carrier violated the Clerks' Agreement when it removed work from, and did not assign work to, a position or positions covered by the scope of said Agreement at Martinsburg, W. Va., and continues to refuse to assign such work to a position or positions covered by said Agreement, and

2. Mr. H. L. Plotner, Martinsburg, W. Va. shall be paid an additional day's pay for August 1, 1966 and each subsequent work day that an employee or employees not covered by the Clerks' Agreement performs work covered by said Agreement at Martinsburg, W. Va. Store House.

OPINION OF BOARD: The genesis of this dispute emanates from the establishment, by the Carrier, of a Stores facility at Martinsburg in February, 1962, prior to which the physical handling of material shipped to the Maintenance of Way Repair Shop was performed by Shop Laborers working under the scope of the Fireman and Oilers' Agreement. In December of 1963 this Stores facility was discontinued and the Purchasing Department reverted to the method of handling of materials that existed prior to February, 1962, i.e. that the materials for the Maintenance of Way Repair Shop were shipped direct and handled entirely by employees of that facility. During the period that the Stores facility was in existence a position of Storekeeper was established (a non-contract position) as well as two clerical positions, a Stockman-Clerk and a Stockman-Typist. During this period, and for 30-odd years preceding February, 1962, the work of physically handling and issuing the materials was performed by a Shop Laborer, and has continued to be so performed. It is the work performed by the Shop Laborer that Petitioner alleges belonged to clerical employees. The duties of the Stockman-Clerk were to check stock, order needed material and approve invoices while the duties of the Stockman-Typist concerned the inventory and realignment of materials at Martinsburg.

In view of the fact that the work claimed is being performed by an employee working under the Agreement between the Carrier and the International Brotherhood of Firemen and Oilers that Organization was given due notice of this dispute, by this Board, and was invited to be heard and file a written submission setting forth their position. Pursuant to such advice, that Organization filed an Ex Parte Submission under date of December 8, 1972 which has been made a part of the record in this dispute.

In short, the position of the International Brotherhood of Firemen and Oilers was **summarized** in their submission to this Board as follows:

"The facilities here involved, the Maintenance of Way Shop, is a shop for the purpose of Group C, of the **above** quoted Rule 1, and can in no way be confused with or related to a storehouse as such.

Briefly the Stores Department ceases to have custody of the materials involved when they are consigned to and received by the Martinsburg Maintenance of Way Repair Shop on a direct delivery basis, and accordingly becomes shop material **immediately** upon its arrival at the shop point; and all work in connection with the handling of such material, including the unloading, unpacking and placement of the material for availability and distribution to the users within the shop, without further order **or** requisition, is work subject to the Firemen and Oilers Agreement.

The Firemen and Oilers Organization holds that in such circumstances as found in the instant claim, and as set forth above, is the exclusive work of employees subject to the Firemen and Oilers Agreement."

The record shows that when the Carrier's Purchasing Department decided to discontinue the temporary Stores facility at Martinsburg, as of December 1, 1963, and revert to the former method of handling materials, the non-contract position of Storekeeper was abolished and the **two** clerical positions were retained and placed under the jurisdiction of the Superintendent of Shops at Martinsburg. These two employees continued to perform the same duties as previously and the Shop Laborer continued to do the physical handling and issuing **of** materials as he had always done.

Petitioner has relied, in support of his position, on the provisions of Rule 1(a), Group 3, of the Agreement, which refers in pertinent part **to** "Laborers employed in ******** storehouses, *******.", and that the disputed facility at Martinsburg was a "storehouse".

Carrier has stated that "storehouses" as referred to in the above referenced Rule has always meant facilities under the direct jurisdiction of the Carrier's Purchasing Department. Carrier has further averred that the Purchasing Department does not maintain a storehouse at every terminal where a shop is located but rather at **most** of the Carrier's larger terminals only. At those terminals where no storehouse is **maintained** material is shipped to the user department from a Stores facility at other locations or from the manufacturer **& 1** employees of the user department do all the unloading, storing and **distribut** of material which is work performed by laborers covered by the Firemen and Oil Agreement.

Based upon a careful review of the record before us we are persuaded to conclude that, based on the facts, no storehouse has been maintained at Martinsburg since December 1, 1963 when the Carrier reverted to the former method of having materials for the Maintenance of Way Repair Shop shipped directly to that Shop. The Carrier, in its submission to this Board, cited Award 13375 as covering a case in point, pertinent portions of which are quoted below for ready reference:

"Carrier contends that whether or not storehouses are to be maintained is a responsibility of management determined by the requirements of the service.

Nothing contained in the Agreement prohibits the closing of these storehouses. Carrier has an inherent right to manage the affairs of the Company and to direct the performance of its employees subject only to any restriction placed upon that right by the collective Agreement with its employees.

From a reading of this record we must conclude that Claimants have failed to establish that, after the **abolishment** of the **storehouses** at Brighton Park and Glenn, any of their work **remained** or that any of their work was performed by laborers holding seniority outside of their Agreement; secondly, they have not satisfactorily established that the work they had performed prior to September 15, 1960, was exclusively performed by **them** nor that historically, traditionally or customarily they had an exclusive right to perform such work. A denial award is required."

In conclusion, we concur that the reasoning set forth in Award 13375 has equal import to the instant case in that the maintaining of storehouses **is** a management responsibility; that the handling of materials for shops **where** there is no Stores Department in operation is the responsibility of Mechanical Department employees; and that Petitioner has not established that the work in dispute was ever performed exclusively by employees under the Clerk's Agreement. We will 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;

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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 20th day of June 1973.