

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19865
Docket Number CL-19837

John H. Dorsay, Referee

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

PARTIES TO DISPUTE: (

(The Central Railroad Company of New Jersey
((R. D. Timpany, Trustee)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (CL-7102)
that:

(a) Carrier violated the Clerks' Agreement, particular reference to Rules No. 1 (g) and 18 (d) at Wharton, New Jersey Freight Office, on June 8, 10, 15, and 17, 1971 when they allowed or required a non-scope employe to perform work of an abolished clerical position, which work had been reassigned to the remaining clerical position at Wharton, New Jersey Freight Office, and

(b) Carrier shall be required to compensate Mr. J. Galovic an additional two (2) hours pay, at the punitive rate, for June 8, 10, and 15, 1971 and for one (1) hour, at the punitive rate, for June 17, 1971, and

(c) Carrier shall be required to compensate Mr. J. Galovic at the punitive rate for an equal number of hours the non-scope employe performs clerical work on days subsequent to June 17, 1971.

OPINION OF BOARD: Prior to April 30, 1971, Carrier maintained a force of employes at its Wharton, New Jersey, Freight Office, consisting of an Agent, a Chief Clerk and a Clerk-Typist. The position of Agent was under the Scope of Telegraphers' Agreement. The other two positions were covered by Clerks' Agreement. Carrier abolished the Clerk-Typist position effective with the end of the tour of duty on April 29, 1971; and, it assigned the work previously assigned to the abolished position to the Chief Clerk position. There subsequently developed a backlog of billing to be done at Wharton which caused Carrier, on June 7, 1971, to instruct the Agent:

This will confirm my verbal instructions to you on June 4th, that Chief Clerk Galovic and yourself will work overtime to eliminate the backlog of billing and related Agency work at your station, that you will more actively assist your Chief Clerk to accomplish this and that all industrial checking in your territory is to be eliminated.

Thereafter, the Agent did perform some of the billing work.

Clerks admit that Carrier's abolishment of the Clerk-Typist position with assignment of its remaining duties to the Chief Clerk was contractually permissible (Rule No. 9(a)(4)). But, it contends that the subsequent assignment to the Agent of billing work which had been performed by the occupant of the abolished position violated:

RULE NO. 1 - SCOPE

(g) Positions or work within the scope of this Agreement belong to the Employees covered herein as provided for in these rules and nothing in this Agreement shall be construed to permit assigning this work to other than Employees covered by and as provided for in these rules or prevent the application of these rules to such positions or work except as provided for in Rule 9(a) (4) or by mutual agreement between the Management and the General Chairman.

Carrier's reasons for denial of the claim are set forth in a letter to the General Chairman, dated "Sept. 28, 1971:

In item (A) of your statement of claim you allege carrier 'allowed or required a non-scope employee to perform work of an abolished clerical position', and a review of your statement of facts indicates this is related solely to 'prepare inbound and outbound billing'.

The non-scope employee to which you refer is apparently the agent at Wharton, and the work of preparing inbound and outbound billing has been performed by agents and is not, by tradition, nor is it exclusively, the work of clerks.

With reference to your statement that Supt. Operation Services-Agencies Kelly instructed Agent Smith by letter of June 7, 1971, to work overtime to eliminate the backlog of billing and related agency work: The instructions to Mr. Smith were that he and the Chief Clerk Galovic would work overtime to eliminate this backlog and to assist his Chief Clerk more actively in maintaining agency work at a current level.

As supervisory employee at this location, Agent Smith has a responsibility to see that the carrier's revenues are properly and immediately protected. The fact that this responsibility will require his working occasional overtime to accomplish it, does not, per se, establish a basis for BRAC claim."

In reply to that letter the General Chairman set forth the position of Clerks:

The claim is not premised upon billing being work reserved exclusively to the clerks system wide historically and traditionally. It is our position that the work of billing at Whartin, (sic) N.J. was assigned by bulletin to the clerks and upon abolishment of Position No. 1360, Clerk Typist, the work of billing was assigned to Position No. 1362, Chief Clerk. At Wharton, N.J. the work of billing has been assigned to Clerks by Agreement and the only way it can be removed from clerks is by Agreement. This is not a new issue of dispute on this property, and in each instance where Carrier has forced us to the NRAB we have been sustained.

There being no evidence adduced that the Agent at Wharton had performed billing work during the existence of the Clerk-Typist position at that point, we find that the facts of record and our many Awards interpreting and applying identical Scope Rules support Clerks' position.

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 Carrier violated the Agreement.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A.W. Paulson
Executive Secretary

Dated at Chicago, Illinois, this 27th day of July 1973.

CORRECTED

Serial No. 271

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

INTERPRETATION NO. 1 TO AWARD NO. 19865

DOCKET NO. CL-19837

NAME OF ORGANIZATION: Brotherhood of Railway, Airline and Steamship Clerks,
Freight **Handlers**, Express and Station **Employees**

NAME OF CARRIER: Central Railroad Company of New Jersey

Upon application of the Carrier involved in the above Award that this Division interpret the same in the light of the dispute between the parties as to the meaning and application, as provided for in Section 3, First (m) of the Railway Labor Act, as approved June 21, 1934, the following interpretation is made:

Under date of August 9, 1973, Carrier addressed the following request to the Executive Secretary of this Third Division of the National Railroad Adjustment Board

Dear Sir:

Re. Third Division Order, Award No. 19865, Docket No. CL-19837.

Carrier finds it necessary to request the Board to clarify its conclusion on page 3 --

"There being no evidence adduced that the Agent at Wharton had performed billing work during the existence of the Clerk-Typist position at that point, we find that the facts of record and our many Awards interpreting and applying identical Scope **Rules** support Clerks' position.",

which evidently led to **its** decision to sustain the claim, in light of Carrier having stated on page 2 of its submission, as well as in its rebuttal statement --

"*** the work of preparing inbound and outbound billing has been, and is, performed by the Freight Agent at this location and every other freight station on the property."

In its opinion, the Board recites the facts as presented by both parties, including instruction to the Agent to assist his Chief Clerk in eliminating the backlog, but ignores the **cogent** points repeated in its recital that --

- 1). Agents did before, during and after the instant claim perform billing at CNJ stations. Such work is not exclusively that of either Agents or Clerks.
- 2). In the instant situation a backlog situation existed caused by other than abolishment of the **Clerk-Typist** position.
- 3). Protection of Carrier revenues was germane to the instruction given.

Pending the Board's review and advice, we must defer acceptance of the Award.

The request was received and docketed by the Executive Secretary on August 13, 1973. **The** Division processed and considered the request in accordance with its usual procedures which included Notice, dated September 4, 1973, to Brotherhood of Railway, Airline and Steam Ship Clerks, herein referred to as "Clerks", which in material part reads:

In the event the **Employees** desire to make reply to the request for interpretation above referred to, will it please do so on or before September 24, 1973, furnishing the Division with fifteen copies thereof and copy to the Carrier.

Upon receipt of Employees' position or reply, the Division will proceed to make an interpretation unless within ten days thereafter, or by October 5, 1973, request is made for permission to file additional statement in answer to **Employees'** statement due September 24, 1973.

If the **Employees** do not desire to make reply, the Board will appreciate prompt advice.

Clerks chose not to file a reply.

The principles of due process being satisfied, this Division issues the following:

INTERPRETATION

Our finding that the Claim had merit is founded on our interpretation and application of Rule **No. 1(g)** SCOPE, **which** is quoted on page 2 of our Award No. 19865; and, Rule **9(4a** and b) which read:

When a position covered by this agreement is abolished, the work previously assigned to such position which remains to be performed will be assigned in accordance with the **following**:

- (a) To another position or other positions covered by this agreement when such position or other positions remain in existence at the location where the work of the abolished position is to be performed.
- (b) In the event no such position **under** this Agreement exists at the location where the work of the abolished position or positions is to be performed, then **it** may be performed by an Agent, **Yardmaster**, Foreman, or other supervisory **employee**, provided that less than four (4) hours work per day of the abolished position **or** positions remains to be performed; and further provided, that such work is incident to the duties of **an** Agent, **Yardmaster**, Foreman, or other supervisory **employees**; and further provided that prior to the abolishment of such position, upon request by either party, the employing Officer and District Chairman, or their duly authorized representatives, will **make** joint check to determine if less than the four (4) hours of clerical work remains on the position abolished.

The work involved in this dispute by, interpretation and application of Rule No. **1 (g)** - SCOPE is contractually reserved to inclusion in and under coverage of Clerks' Agreement. Carrier, by the **unequivocal** unambiguous language of Rule 9(4)(a), stands contractually obligated to assign the work of an abolished position to another Clerk's position at the same location, if one **is in existence**. In the instant case, the Chief Clerk position remained in existence at the location where work covered by Clerk's Scope Rule was assigned to and performed by an Agent.

This Division has no equity jurisdiction. The parties to an Agreement are **committed** to comply with its **terms**.

The tests of system-wide "exclusivity"; and, the "ebb and flow" doctrine are not **applicable** in interpretation and application of a "Positions or work..." scope rule unless made applicable, in whole or in part, by specific provisions found elsewhere in the agreement. There are no such specific provisions in the confronting Clerks' Agreement. Indeed, Rule **9(4b)** is contingently applicable only upon proof that Rule **9(4a)** is **not** applicable.

Page 4

Referee John H. Dorsey, **who** sat with the Division, as a neutral member, when Award No. 19865 was adopted, also participated with the Division in making this interpretation.

NATIONAL ~~RAILROAD~~ ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 6th day of September 1974.