NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 19923
THIRD DIVISION Docket Number CL-19961

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employes
(Southern Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-7159) that:

(a) Carrier violated the Agreement at Washington, D. C., when it required "excepted" employes to perform work which for many years has been performed by scheduled employes.

(b) Mrs. Eleanor Bowman and Mrs. Gertrude Johnston, Stenographers, shall be compensated for eight hours' pay each at the time and one-half rata of pay for the following dates; February 13, 14, 15, 21, 23, 26, 27, 28, 29, March 1, 4, 5, 6, 8, 13, 15, 19, 20, 22, 28, 29, April 1, 4, 10 and 11, 1968.

OPINION OF BOARD: Claimants in this matter were stenographers in the stenographic pool in the Office of Administrative Services of the Carrier in Washington, D. C. Starting in February 1968, two excepted employees, secretaries to two officials, typed certain Financial Statements for the stockholders' meeting.

The Organization contends that the work in question should have been assigned to Claimants whereas the Carrier argues that there is no contractual restriction for the assignment of the work in question to excepted personnel. The Scope Rule in the applicable Agreement does not define the work to be performed by the covered positions. The most relevant Rules are as follows:

"Rule l--Scope (Revised, effective October 1, 1938)

These rules shall govern the hours of service and working conditions of employees described in the following respective groups in general and district offices, and similar employees in offices and operations under jurisdiction of other officers and subordinate officers in the various departments of each of the Carriers named in the caption of this agreement:

CROUP 1. Clerks--
(a) Clerical Workers, and
(b) Machine Operators, all as hereinafter defined in Rule 2."

" * * * * * * *

"(b) (Revised, effective October 1, 1938) This agreement does not apply to forces in immediate office of President, Vice-Residents or General Managers, or their equals; nor to off-line offices; nor to employees performing duties of a direct and confidential nature in immediate offices of General or District Officers or their equals or superiors, including Chief Clerks, Stenographers, File Clerks, nor to other positions therein which have heretofore been agreed upon as excepted, nor to Chief Clerks or personal stenographers of divisional officers or their equals, except Roadmasters or Storekeepers (Roadmaster's Chief Clerk is an excepted position); nor to employees assigned to road service where special training, experience and fitness are necessary; nor to other positions of a direct and confidential nature hereafter mutually agreed to be excepted; nor to Ticket Agents and Assistant Ticket Agents in uptown or outside ticket offices; nor to employees now covered in existing agreements. It is intended that duties and responsibilities shall govern. The employees covered by this paragraph and paragraph (c) of these exceptions shall, however, retain their seniority rights as provided in this agreement."

"Rule 2--Definition of Each Group of Employees as Covered by Respective Sections of Scope Rules

(a) (Revised, effective October 1, 1938) Clerical Workers -- Employees who regularly devote not less than four (4) hours per day to the writing and calculating incident to keeping records and accounts, rendition of bills, reports and statements, handling of correspondence and similar work, including Depot Ticket Agents and Depot Baggage Agents."

Petitioner asserts that the question essentially is whether or not employees of the stenographic pool have the right to perform work which they have performed over a period of years, in preference to employees in excepted positions. It is further stated that the work in question is normal schedule work for which the stenographic pool is maintained. The Carrier maintains that there is no typing or stenographic work which is assigned solely and exclusively to employees in the stenographic pool. Carrier further states that the type of work in question, typing of certain financial statements, had been done in the past by both excepted employees and pool stenographers.

It is well settled by a long series of Awards that under a Scope Rule such as that quoted above, if the employees claim certain work, they must prove that the work by tradition, custom and practice is reserved to the class of employees concerned (see Awards 19339, 14075, 15890, 16452, and 16825 among others). In the matter before us, no such proof has been offered. Since the record indicates Petitioner has failed to sustain its burden of proof, we must deny the cl

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes 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 was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 7th day of September 1973.

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