

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20791
Docket Number CL-20665

Joseph A. Sickles, Referee

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

STATEMENT OF CLAIM: Carrier did not violate the agreement **with** the Brotherhood **of Railway, Airline and Steamship** Clerks as alleged by Head Bookkeeper-Clerk **Maryanne** U. Conlan, office of Corporate **Accounts**, Washington, D. C., in her claim for 8 hours pay at her time and one-half rate of \$27.89 per day effective February 13, 1968, and continuing for each day thereafter until such time as the alleged violation ceases to exist. Her claim alleges that Accountant Bruce L. Kerr "performs clerical work on a daily routine basis which entails **identical** duties as performed by Mrs. Conlan, Bookkeepers and Clerks in the office of corporate accounts." (**BRAC** file 2961)

OPINION OF BOARD: Claimant asserts that Carrier violated the Scope **Rule** of the Agreement when it failed to establish a schedule clerical position to perform certain work concerned with consolidated systemwide journals and financial statements; but rather assigned the work to an excepted supervisory employee (Kerr).

Carrier denies that any of the duties performed by Kerr have been performed by bargaining unit employees. In this regard, Carrier states that:

"During handling of the claim on the property, BBAC representatives never stated what **specific** work at **what specific** time and for what amount of time on any specific date or dates Mr. Kerr **allegedly performed** work belonging solely and exclusively to claimant: or to other schedule clerks in that office. Actually, a comparison of the preponderating duties of ~~the~~ claimant and bookkeeper-clerks (Exhibits '**B**' and '**C**') with the functions, **scope** and responsibilities of the Accountant and later **Assistant** Manager B. L. Kerr provides **clear and** conclusive evidence of the wide difference **between** them. Obviously, no schedule clerical work was **assigned** to or was **taken** over or performed by Mr. Kerr. The General Auditor's letter dated September 5, 1968 to claimant (Exhibit '**G**') sets forth in detail the basic differences

"between 'bookkeeping' entries made by schedule clerks and the 'accounting' entries made by Mr. Kerr, and fully answered and refuted by self-serving allegations made in Local Chairman M. U. Conlan's letter of July 8, 1968."

Also, during the protracted handling of the claim on the property, neither **BRAC** Local Chairman Conlan (the claimant) nor any other **BRAC** representative produced any evidence or proof to substantiate the self-serving allegations made in the Local Chairman's letter of April 12 and July 8, 1968, nor did they explain how or why the five cited rules **allegedly** were 'violated.' Although asserting that Mr. Kerr performed clerical work 'which entails identical duties as performed by Mrs. Conlan, Bookkeepers and Clerks', the Local Chairman did not contend that Mr. Kerr was doing any specific work belonging to or removed from her, nor any work previously assigned to an existing or discontinued schedule clerical position."

The Board is of the view that Carrier has properly relied upon a "burden **of** proof" defense. We have considered the handling on the property and are unable to detect that Claimant has submitted to us sufficient information as a basis for a finding of a violation.

This is not to say, in any manner, that this Board is insensitive to an allegation of a "Scope **Rule**" Violation. However, the rule in question has been labeled (and properly so) as "general" in nature (see, for example, Award 19923) and in order to prevail under such a rule, the Organization must supply us with proof **that** the work in question has been performed historically, traditionally and by custom, on an exclusive **- system-**wide basis. No such proof has been presented and accordingly, we will dismiss the **claim** for failure **o**f said proof.

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 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 claim be dismissed.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A.W. Paulsen
Executive Secretary

Dated at Chicago, Illinois, this 31st day of July 1975.