

RATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21037
Docket Number CL-21027

Francis X. Quinn, Referee

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

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood,
GL-7807, that:

(a) The **Bureau** has violated the Rules Agreement, particularly Rules 1 and 2 by arbitrarily allowing work formerly performed by fully covered **employees** to be performed by an **employee** serving in an official capacity.

(b) Claimant **J. D. Newberry** and/or his successor should be paid at his respective regular basic rate of pay at the straight time rate, in addition to what he has **already** been compensated, for **each** of his regularly assigned days commencing March 1, 1974 and continuing until this work is returned to the claimant and/or his successor.

OPINION OF BOARD: The record indicates that the Scope Rule involved herein is general in nature. Under such a scope **rule** it is the obligation of the Petitioner to prove that by tradition, custom and practice such work is reserved to employees covered by the Agreement. In this case the Petitioner has failed to meet the burden of proof that the work complained of **is** performed exclusively by **Clerks**. Therefore, we must deny the claim.

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;

That this Division of the Adjustment Board **has** jurisdiction over the dispute involved herein; and

That the Agreement **was** not violated.

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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 15th day of April 1976.

LABOR MEMBER'S DISSENT TO
Award 21036 (Docket CL 21023) ✓
Award 21037 (Docket CL 21027) ✓
Award 21038 (Docket CL 21028)
Award 21039 (Docket CL 21022)

The awards herein **are** in palpable error and require dissent. In each instance a claim was filed, based on an alleged violation of the rules agreement, particularly Rule 1 Scope and Rule 2 Classification of Work, account work formerly performed **in** the Distribution Department of the ~~Bureau~~ being performed by **employees** of the Southern Freight Association Data Processing Bureau and that said agreement was violated when the Bureau required or permitted **employees** not subject thereto to perform such work.

After correctly and precisely setting out the issue in each particular instance, one would **think that** the issue would then be decided, Instead, however, the awards avoid the issue and set out various statements that are **most** absurd, ridiculous and erroneous, and while all four dockets were similar in respect to the rules agreement that was violated, the decisions rendered by the **Majority** varied to such a degree that one wonders if the **issue** was given any consideration whatever or if the conclusion reached by the Majority was for the purpose of creating confusion **in** an attempt to justify an erroneous decision.

In Award 21036 the **Opinion of Board** reads:

"The use of labor saving devices or automation does not ipso facto violate the scope of the Agreement. e
Petitioner must establish the work complained of has by tradition, custom and practice been **performed** by Agreement covered personnel to the exclusion of others,

"Since the Petitioner has not met the burden of establishing the essential elements of the claim, it **must** be denied."

Opinion of Board in Award 21037 sets out:

"The record indicates that the Scope Rule involved herein is general in nature. Under such a scope rule it is the obligation of the Petitioner to prove that by tradition, custom and practice such work is reserved to **employees** covered by the Agreement. In this case the Petitioner has failed to meet the burden of proof that the work complained of is performed exclusively by Clerks. Therefore, we must **deny** the claim."

whereas in Award 21038 the Opinion of Board **skirts** the real issue completely by stating:

"The Petitioner agrees that the work complained of was previously performed by **commercial** printers.

"Since the Petitioner has not met the burden of establishing the jurisdiction of the work we must deny the claim."

and **in** Award 21039 the Opinion of Board is even **more** so absurd when it states:

"A review of the record establishes that the Petitioner has failed to **prove** an actual transfer of work,

"The scope rule of the Agreement is of the general type in that it refers to **employees** and does not delineate work, and under which, if the **Organization** claims certain work, it must prove the work complained of has, by tradition, custom and practice, been performed by Agreement covered personnel to the exclusion of others. See Awards 20699 and 20640.

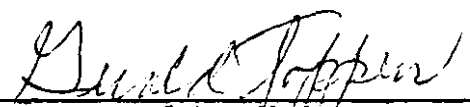
"Since the Petitioner has not met the burden of establishing the essential elements of the claim, it must be **denied**."

Certainly, the work complained of has by tradition, custom and practice been performed by agreement-covered personnel **to** the exclusion of others inasmuch as the employees, **under the** agreement violated, were

the only employees ~~who~~ performed such work and were the only ones who did so over the years and up 'until the ~~time~~ of the ~~establishment~~ of the Southern Freight Association Data Processing Bureau, and while the Scope ~~Rule~~ involved herein may be general in nature, it was proved to Referee Quinn, who authored these awards, that such work was by tradition, custom and practice performed by agreement-covered personnel and could not be performed by anyone else. To ~~deny~~ these claims based on what has been set forth ~~in~~ the ~~Opinion~~ of ~~Board~~ is beyond one's comprehension.

Without ~~voluminous~~ evidence relative to tradition, custom and practice, ~~common~~ reasoning dictates that if the covered employees had performed the work for over ~~thirty~~ years, prior to its being transferred to ~~n&contract~~ employees in the ~~noncontract~~ Data Processing Bureau, that ~~it had~~ become the right of the contract employees under the principles of exclusivity. Certainly, the pretexts invoked by the Referee of (1) "the use of labor ~~saving~~ devices or automation," (2) that the Scope ~~Rule~~ ~~is~~ general in nature, and (3) that the "petitioner has failed to prove an actual transfer of work," does not justify the removal of the work that had been ~~performed~~ by Claimants for over thirty years or the denial of claim by the Referee.

For reasons ~~hereinabove~~ cited the awards are in palpable error and require a vigorous dissent.


Labor Member

CARRIER-S' ANSWER
TO
~~LABOR MEMBER'S~~ DISSENT
To
AWARDS 21036, 21037, 21038 AND 21039

The intemperate dissent **in** no manner detracts from the validity of the Awards, which **are** sound **and** in direct response to the issues raised **in** each dispute. The awards **follow** well established principles laid down by the **Board** concerning **scope** rules of the general type, labor saving devices, etc. There was no probative evidence by the **Petitioner** that the work complained of in each docket had, by tradition, custom and practice, been performed by agreement-covered personnel to the exclusions of all others. It is well established that in proceedings before this Board, It is the burden of the Petitioner to prove all essential elements of its claim, **and** that mere assertions are not proof.

D. C. Carter

D. J. Maylor

W. F. Fisher

J. E. Mason

R. W. Gardner