NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 21038
THIRD DIVISION Docket Number CL-21028

Francis X. Quinn, Referee

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

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood, GL-7804, that:

(a) Bureau has, by its action, violated the Scope Rule and other provisions of the Clerks' Agreement, and continues the violation by having recognized clerical work done by persons not covered and who hold no seniority or other rights under the current Agreement.

(b) Messrs. D. R. Walker, R. L. Edge, G. N. Christopher, R. L. Parrish, Jr., and B. F. Hillhouse be paid at their respective regular basic rate of pay at the straight time rate of pay in addition to what they have already been compensated commencing March 1, 1974, and continuing until this work is returned to the claimants and/or their successors.

OPINION OF BOARD: 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.

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. Paulus
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 employes of the Southern Freight Association Data Processing Bureau and that said agreement was violated when the Bureau required or permitted employes 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. The 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 employes 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. Tnerefore, 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 employes 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 employes, under the agreement violated, were

the only employes 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 andpractice 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 employes had performed the work for over thirty years, prior to its being transferred to noncontract employes in the noncontract Data Processing Bureau, that it had become the right of the contract employes 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 MEMBERS' 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. Mayle

W. F. Euler

J. E. Mason

R. M. Yandell