

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21039  
Docket Number CL-21022

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-7796) that:

(a) The work formerly performed in the Distribution Department of the Bureau is now **being** performed by the employees of the Southern Freight Association Date Processing Bureau and this work consists of preparing keypunch cards which generate mechanically **the** number of copies of tariffs and supplements required by any given Carrier with variable punching instruction information.

(b) The Bureau violates the Agreement when it requires or permits employees not subject thereto to perform such work.

(c) Claimant P. E. Williams and/or his successor should be paid at his respective **regular** basic straight time rate of pay 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:** A review of the record establishes that the Petition-  
**er** 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.

**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.

A W A R D

Claim denied.

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

ATTEST:

*A.W. Paulos*  
Executive Secretary

Dated et Chicago, Illinois, this 15th **day** of April 1976.

LABOR MEMBER'S DISSENT 1-0  
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. 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 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 noncontract 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 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

W. J. Maylor

W. F. Fisher

J. H. Mason

R. W. Gordon