NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 21581
THIRD DIVISION Docket Number cL-21004

William M. Edgett, Referee

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

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-7707) that:

1. Carrier violated and continues to violate the Agreement between the parties when on August 16, 1972, and each Wednesday thereafter, it assigned a crossing watchman to perform the duties of the Janitor at Gambrinus Yard and Roundhouse, Gambrinus, Ohio.

2. Carrier shall, as a result, compensate M. S. Murdock for each day of his claim and restore the work to an employe coming within the Scope of the Agreement.

OPINION OF BOARD: Prior to July 7, 1972, Carrier maintained a janitor's position under the Clerks' Agreement which covered certain cleaning functions five days per week at Canton Yard Office and Freight House, and Gambrinus Yard and Roundhouse. On July 7, 1972, as a result of force reductions among crossing watchmen working under the terms and provisions of an agreement with Carrier's Maintenance of Way forces, Carrier established a relief crossing watchman's position working four days per week as a relief crossing watchman and one day (Wednesday) as a janitor. The Wednesday janitor work was performed at the Gambrinus Yard and Roundhouse.

BRAC contends that the removal of part of the work of the janitor's position working under their agreement, and assignment of this work to a crossing watchman working under an agreement between Carrier and the BMWE, is a violation of the Clerks' Scope Rule, particularly that portion reading:

> "Positions or work within the scope of this agreement belong to the employees covered thereby and positions or work shall not be removed from the scope hereof without negotiation and agreement between the parties signatory hereto."

The Carrier contends the Clerks' Scope Rule is general in nature, that janitorial service has never been the exclusive work of Clerks, and is performed elsewhere by others such as Bridge and Building Department Employes and Maintenance of Way Employes, contending further that this is a "third party" case, that Claimant Murdock is not a proper claimant in any event, and the Organization expanded its claim before the Board.

Taking up the third party issue first, the Board gave notice to the BMWE of the pendency of this dispute; hearing was-held thereon. The BMW'S claimed it was not a party of interest in the dispute. Thus, under Transportation Communication Employes' Union v. Union Pacific Railroad Co., 385 U.S. 157, we will decide the case solely on the basis of the BRAC agreement.

The scope rule under which this claim arose is not a general scope rule and our awards holding to a proof requirement of exclusivity therefore do not apply. In Award 19783 (Roadley) which involved an almost identical rule, we held:

> "One cannot read into the language of Rule l(b) the right to remove work within the scope of the Agreement and assign such work to positions not covered by the Agreement, except through the process of negotiations. Countless prior awards of this Board have recognized this principle, spanning a period of more than thirty years.....
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> "As recently as 1972, Award No. 1, of Public Law Board No. 954 (Dorsey), stated, in its consideration of the interpretation of a BRAC Scope Rule, which was identical in language to that contained in Rule l(b) before us, as follows:
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> > 'The weight of authority of Third Division, National Railroad Adjustment Board case law compels a finding that when the Scope Rule of an agreement encompasses 'positions and work' that work once-assigned by a carrier to employees within the collective bargaining unit thereby becomes vested in employees within the unit and may not be removed 'except by agreement between the parties....'"'

See, also, Awards 6141. 6357. 6973. 7129. 7168. 7349. 7350. 7478. 11586, 11127. 12414. 16126. 17934, 19719. 20382. 20839. 21050. 21051. 21052, and 21053.

Part 1 of the Statement of Claim will be sustained.

With respect to the issue of Murdock not being a proper claimant, we do not find Carrier's arguments persuasive. However, we are not disposed to require payment to Claimant for "each Wednesday thereafter" (August 16, 1972). Claimant initially submitted time claims for five specific dates, August 16 and 30, September 6, 13 and 30, 1972. Petitioner not once, in progressing the claim on the property, stated or alleged that these time claims covered "each /succeeding/ Wednesday thereafter." Accordingly, Part 2 of the Statement of Claim will be sustained for the five specific dates on which time claims were submitted.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes within the weaning 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

The Agreement was violated.

A W A R D

Claim sustained as set forth in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: G. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 17th day of June 1977.