

RATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21871
Docket Number CL-21217

Nicholas H. Zumas, Referee

(Brotherhood of **Railway**, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station **Employees**
PARTIES TO DISPUTE: (
(Burlington Northern Inc.

STATEMENT OF CLAIM: **Claim** of the Systea **Committee** of the Brotherhood,
GL-7832, that:

1. Carrier violated the rules of the current Clerks' **Agreement which became** effective **March 3, 1970**, when it abolished the General Clerk's position at Grand Rapids, Minnesota, on January 30, 1974, and assigned the yard checking work to **employees** of another craft and class.

2. Carrier shall now be required to **compensate Mr.** Herbert **Kauppi**, Clerk, Grand Rapids, Minnesota, two hours **overtime** for January 31, February 1, **4, 5, 6, 7, 8, 11, 12, 13, 14,** 15, 1974, and each and every day thereafter that Telegraphers perform the yard checking work Monday through Friday at Grand Rapids, Minnesota.

OPINION OF BOARD: The essential facts are not in dispute: Prior to January **31**, 1974 Carrier's Grand Rapids station consisted of an agent, two Operators (telegraphers) and **three** clerks, **all** on a Monday through Friday **workweek**. Carrier determined that because of an increasing **demand** for train-order and **communication** service, the two telegrapher **positions** **could** be rearranged to provide seven days a week service. Carrier further decided that under the circumstances a clerk's position should be abolished. Effective January **31**, these changes were made effective. **Claims** were filed by a clerk holding one of the two positions not **abolished, contending** that the night shift operator (**2:00 a.m. to 10:00 a.m.**) was doing "yard checking."

The Organization contends: 1) Yard checking was historically and exclusively **performed** by clerks at Grand Rapids, and 2) **even** though Carrier "attempted to withdraw" its notice to agree to implement Article VIII of the **February 25, 1971 National Agreement** (interchanging work **assignments** between Clerks and Telegraphers), Carrier is prevented from unilaterally **intermingling** Clerks' and Telegraphers' work (as in Grand Rapids) until it "completes the procedures under Article **VIII**."

With **respect** to the first contention the Board must follow what now must surely be considered a universally consistent tie in the railroad industry: Where a Scope Rule (as in this case) is general in nature, the Organization has the burden of showing by substantive evidence that the work in question has been traditionally and **customarily** performed by the employees covered by the Agreement on a **system-wide** basis to the exclusion of all other employees. There is no such showing in this record.

As to the Organization's second contention, the Board finds it to be without merit. We are not presented with the question of whether Carrier has the right to withdraw its notice of an intent to implement Article VIII of the February 25, 1971 Agreement, nor does it have before it a violation of Article VIII. The fact is, as the Organization acknowledges, "the BN and the Clerks and Telegraphers have not made an agreement, **nor** are they even arguing that they intend to make an agreement, to combine Clerks' and Telegraphers' work."

Under the circumstances, we have no alternative but to deny the claim.

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 **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

The Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

Dated at **Chicago**, Illinois, this 31st day of January 1978.