

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number **21980**
Docket Number **CL-21624**

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: { (Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
Express and Station **Employees**
(
(Seaboard Coast Line Railroad **Company**

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood
(**GL-8097**) that:

1. Carrier violated **Rule 1**, and other provisions of the current Agreement(s), **July 5, 6, 7, 8, 9, 10, 11, 12, 13 and 15, 1974**, when it permitted and required Herder H. D. Whitfield, an employee not covered by the Agreement and holding no seniority thereunder, Savannah, Georgia to **transport** train end engine crews; switch engine crews and clerks from one end of yard to the other end. Messenger switch list or track checks, waybills, weight scale tickets to crew's on the north or south end of yard as directed by the Yardmaster.

2. (a) Carrier **shall be required** to compensate Clerk J. Keith, Jr., one (1) day's pay, eight **(8) hours** at one and one-half times the pro rata rate of position assigned July 6 and 13, **1974**, for the violation set forth above.

(b) Carrier shall be **required** to compensate Clerk W. L. Aycock, Jr., one (1) day's pay, eight (8) hours at one and one-half times the pro rata rate of position assigned July 7, 8, 10, **11** and 15, **1974**, for the violation set forth above.

(c) Carrier **shall be required** to compensate Clerk E. H. Futch, one (1) day's pay, eight (8) hours at one and **one-half** times the pro rata rate of position assigned July 5 and **12, 1974**, for the violation set forth above.

(d) Carrier shall be required to compensate Clerk R. M. Warren, one (1) day's pay, eight **(8) hours** at one and one-half times the pro rata rate of position assigned July **9** and 10, **1974**, for the violation set forth above.

OPINION OF BOARD: This dispute involves the transportation of train and engine crews, other **employees** and various documents from one point in the Yards in Savannah, Georgia **to** another point in the Yard, at the direction of the Yardmaster. The work in question was done by a Herder, an **employee** not covered by the Clerk's Agreement.

Petitioner relies principally ~~on the~~ Scope Rule of the Agreement in its arguments. That rule provides:

"RULE 1 - Scope

"(a) These rules shall govern the hours of service and working conditions of employees ~~engaged~~ in the work of the class or craft of office, station and storehouse employees as represented by the ~~Brotherhood of Railway,~~ Airline and Steamship Clerks, Freight Handlers, Express and Station Employees, subject to the exceptions noted in Addendum No. 1.

"Employees who regularly perform the writing and calculating incident to keeping records and accounts, writing ~~and~~ transcribing letters, bills, statements and similar work, including ~~stockmen,~~ countermen, OS&D clerks, warehouse and storehouse foremen, checkers, stenographers, ticket clerks, ticket office employees; crew clerks, crew callers, also those employed in the operation of office mechanical ~~devices~~ in connection ~~with~~ such duties and work such as ~~comptometer~~ operators, I.B.M. ~~and~~ key punch operators, and other office and station employees, such as office boys, messengers, train announcers, ~~gate-~~men, certain baggage and parcel room employees and telephone ~~switchboard~~ operators.

"Employees employed in and ~~around~~ stations, storehouses, warehouses, offices, scrapdocks, and transfers to perform service such as laborers, porters, janitors, cleaners, ~~coopers,~~ sealers, truckers, stowers, freight handlers, callers, scalers; certain baggage, mail and parcel room employees, red caps, maids; crane operators, automotive ~~power~~ truck or tractor operators; laborers ~~who~~ are used to close doors, bleed air, transfer and adjust overloads and bad order cars or to clean freight equipment on yards or at agencies; and non-clerical employees at phosphate elevators, not including stevedore duties at Port Tampa elevator.

"(b) ~~All~~ exceptions to the foregoing appear in Addendum No. 1."

Petitioner cites numerous awards dealing with transfers of work or **abolishments** of positions in support of its arguments. The essence of the **argument presented by** the Organization is **that** the inclusion of "messenger" in the Scope **Rule** also must include messenger work and that such work cannot be performed by other **crafts** or classes of **employees** without frustrating the purposes of the Agreement.

Carrier states that the **work performed by** the Herder in this dispute has been performed by that classification for over twenty five years. **Further**, Carrier alleges that similar work on other points on the property **has** been performed not only by clerks but by **yardmasters**, shop employes, yard employes, taxi companies and contract bus services. Carrier argues that the Messenger classification has no exclusive right to perform the **type of work** in dispute.

In the first instance, there was no transfer of work or abolishment of positions in this dispute. It is quite clear that Carrier's argument has substantial weight in that many classes of **employees** have performed the work in question. The Scope **Rule** is general in nature and the burden of **proving** exclusivity is upon Petitioner; that burden has not been met in this **case**.

The Organization's argument before this Board attacks the legitimacy of the exclusivity doctrine, **among** other points. Ten years ago this Board discussed the exclusivity doctrine, in Award **16550** (Dorsey), stating:

"As we have so **often** said the burden which a Petitioner bears to satisfy the principles is harsh. However, the **many** years of **ancestry** of the principles must be honored in the interest of uniformity **and** stabilization throughout the industry. Be there any who find the principles repugnant - and we know there are some - their remedy lies in collective bargaining."

The principle **cited** in Award **16550** is still sound. We must follow the case law of this Board in the application of a general Scope **Rule** relating to an **Organization's** claim to exclusive right to certain work.

In the case before us the Petitioner has failed to provide evidence that the work of the messenger herein in dispute has been **performed** historically, customarily and exclusively by employes under the agreement. Consequently, the Claim must be dismissed for Lack of proof.

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

That Petitioner has **failed** to meet its burden of **proof**.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

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

