

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22689
Docket Number CL-22160

Abraham Weiss, Referee

(Brotherhood of Railway, Airline and
(Steamship Clerks, Freight **Handlers**,
(Express and station **Employees**
-PARTIES TO DISPUTE: (
(Southern Pacific Transportation Company
((Pacific Lines)

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood
(**GL-8386**) that:

(a) The Southern Pacific Transportation Company violated the Clerks' Agreement on February 16, 17 and 23, 1974, when it required and/or allowed Assistant Chief Dispatchers who do not hold seniority rights thereunder to perform work theretofore assigned to and performed by **Agreement covered employees**; and,

(b) The Southern Pacific Transportation Company shall now be required to allow **employee D. J. Blake** eight (8) hours' additional compensation at the time and one-half rate of Dispatcher Clerk Positions 351 and 350 each date February 16 and 17, 1974, respectively; and

(c) The Southern Pacific Transportation Company shall now be required to allow **employee B. E. Wallner** eight (8) hours' additional compensation at the **time** and one-half rate of Dispatcher Clerk Position 350 February 23, 1974; and

(d) The Southern Pacific Transportation Company shall be required to allow interest at the rate of **2%** per month compounded monthly **commencing February 1**, 1974 and continuing until the claims of **employees** Blake and Wallner have been allowed as presented.

OPINION OF BOARD: This claim, filed March 27, 1974, results from the allegation by the Clerks' Organization that three Assistant Chief Dispatchers performed clerical work within the scope of the Clerks' Agreement at Carrier's **Roseville**, California train dispatcher office on February 16, 17 and 23, 1974.

Referee hearing was held at which Organization and Carrier representatives and the **American Train Dispatchers Association (ATDA)** as third party appeared and argued the issues. **ATDA** also filed a written submission as part of the record in this case. All parties have cited or submitted **numbers of opinions** of this Board in support of their position. The issues here involved have been fully argued in Referee hearing and Panel discussion and studied in our **consideration** of this case.

The case arose under the following circumstances:

By way of background, **on** September 16, 1971, Carrier and the Clerks' Organization concluded an agreement, known as the TOPS agreement. 'TOPS' is an acronym for Total Operations Processing system -- Carrier's computerized information system. The TOPS agreement is essentially an **employee** protective agreement in connection with the installation and operation of Carrier's electronic computer system, involving, **among** other matters, changes in methods of work accomplishment.

Some two and one-half years later, on February 16, 1974, **Carrier** established an additional position of Assistant Chief Dispatcher on each of three shifts for a six months trial period, pursuant to the **recommendation** of a Carrier-Train Dispatcher Joint Committee established under the provisions of a May 27, 1937 national agreement. These three positions were abolished after the six-months trial period.

It is the work allegedly performed by these three newly assigned Assistant Chief Dispatchers **that** led to this dispute presently before us.

The Clerks charge as follows:

1. On February 16, 1974, the **Assistant** Chief Dispatcher used Form 236-Power Change and Failure and performed clerical duties assigned to Dispatcher Clerk and Dispatcher Clerk (Steno) in Chief Dispatcher Kennedy's memorandum of November 13, 1973 which, the Clerks assert, "outlined" the duties of clerks and Assistant Chief Dispatchers.

2. Also on February 16, 1974, but on the next shift, an Assistant Chief Dispatcher "performed clerical work of obtaining information on power swap from Assistant Chief Dispatcher J. Johnson, dispatcher on South District and **then** relaying it to" the Dispatcher Clerk.

3. On February 17, 1974, the Assistant Chief Dispatcher "obtained bad order units information from **Mountain** Dispatcher, R. Colbert, and by-passing clerks **on** duty relayed that information directly to the TOPS Clerk **in** TOPS **Room.**"

4. **On** February 23, 1974, the Assistant Chief Dispatcher performed "clerical duties" assigned to Dispatcher **Clerks** or Dispatcher Clerk (Steno) per Chief Dispatcher Notice of Nwember 13, 1973 "by obtaining information on bad order **units** from **Mountain** Dispatcher and relaying same to the Tops Clerk **in** Tops-Room in direct conflict with instructions from C. L. **K./ennedy/**, Chief Dispatcher."

The Clerks' **Organization** asserts that the work subject to claim in this case is **covered** by the Clerks' Scope Rule; that it has been the usage, practice and custom for clerical **employees** to perform such work; that the specific work had been assigned to clerks by Chief Dispatcher **Kennedy's** instructions of April 19 and Nwember 13, 1973; and that the Assistant Chief Dispatchers' performance of such work conflicted with the Chief Dispatcher's **instructions.**

Chief Dispatcher Kennedy's April 19 **memorandum was** addressed to Assistant Chief Dispatchers, Dispatchers, and Clerks. He noted that some Assistant Chief Dispatchers were personally filling out forms and performing other "clerical." duties that should be delegated to Clerks. **In** order to allow Assistant Chief Dispatchers "more **time** to devote to crews and power and supervisions of Train Dispatchers" Assistant Chief Dispatchers were instructed to delegate specific work to Clerks, **i.e.:**

"Preliminary Hot Box Reports.

"Sight Reports.

"Up-dating on line delays.

"Power change and/or engine failures.

"Exchanging lineups with other Assistant Chief Disprs -
will be necessary for you to show tentative arrival
times in pencil on mini sheets for Clerks use.

"**Make** phone calls for you to relay or obtain information.
"Obtain power on hand from roundhouse forces.
"Put **information** on tape recorders.
'Encourage people you are working with to get **certain**
information or furnish **information** to/from Clerks.
"**If one** Clerk is busy, use one of the others.
"Occasionally will be necessary for Clerk **to** use your
mini sheets, please cooperate."

Clerks were instructed to "**assume** the **above**."

The memo concluded:

"I have been advised by several Assistant Chief Dispatchers recently that handling of crews and watching railroad has not been performed to their satisfaction (nor mine) because they were busy with reports. This should alleviate the situation."

Chief Dispatcher **Kennedy's** November 13, 1973 memorandum, addressed to Assistant Chief Dispatchers, Train Dispatchers, and Tops Clerks, reads:

"Severe criticism received today from General Manager regarding non-compliance **Roseville** Dispatcher's Office inputting TOPS reporting procedures, particularly unit failures, line ups and updating of lineups and **to** correct this condition the following procedures will be instigated effective **12:01** AM, November 14, 1973:

1. All unit failures on line will be placed in lower left hand corner of train sheet in space provided under extra-ordinary and unusual occurrences.

TOPS Clerk will check **trick** rooms periodically **and** pick up this information off train sheet and promptly input same.

2. To correct **input** distribution **of** helpers at regular intervals of at least every 2 hours.
TOPS Clerk will check with Trick Dispatcher Mountain, Coast and Cal-P regarding **movements** of helpers and promptly input **information** secured.

"3. The TOPS Clerk will pull 16 hour AQ of trains **on** line your respective districts. The Assistant Chief Dispatcher will orally update this lineup or AQ to the TOPS Clerk **during** second and sixth hour of prospective shift and TOPS Clerk will promptly update **same**.

4. The **only** TOPS report **now** required to be maintained by Assistant Chief Dispatchers will be report of trains projected to run from your various yard."

The November 13 memorandum was supplemented by one dated November **15**, 1973 addressed **to TOPS CLERK - Office**, as follows:

"My **W/430/13 of November 13th** in connection with reporting engine failure, helper, updating sight reports, etc.

"There is no objection to getting this information from either Asst Chief Dispatcher or Train Dispatcher, in other words, if one of them is busy then you should **ask** the other one to furnish information to your **[sic]**.

'While you are in Train Dispatchers office, picking up bad **order** units, check with train dispatcher to determine any power that has been changed out on his district or any units that have been set out and/or picked up making appropriate entry **into** TOPS computer."

The Clerks' Organization relies heavily on Award 31 of Public Law Board **843**, on this property, which sustained a claim by the Clerks that Assistant Chief Dispatchers performed clerical work covered by the Clerks' Scope Rule. The dispute in **that** case arose in 1963 and **was** decided September 16, 1974, some six months after the filing of the instant claim.

The **claim submitted** in that case alleged that Assistant Train Dispatchers at Bakersfield, California compiled and typed passenger train lineup; handled and typed messages in regard to livestock; and typed "messages in regard to Cabooses, Bad Order Cars, Excessive loads, including calls on passenger and Freight trains. "

PLB 843 reviewed the Clerks' and the Dispatchers' Agreements and determined that "the position **and** duties of an Assistant Chief **Dispatcher** are **of** a supervisory nature. Nowhere in the section /Definition of Chief, Night Chief, and Assistant Chief Dispatcher's Positions/ do we find any statement that requires the Assistant Chief Train Dispatcher to make or keep records of any kind or nature."

The Board then concluded:

"We hold that the Carrier restricted itself **with** reference to the type of work Assistant Chief Dispatchers could do under the Agreement between the Carrier and the Train Dispatchers. We find that **in** allowing the Assistant Chief Dispatchers to perform and do clerical work, the Carrier violated the Agreement between the parties to this dispute."

The Clerks, commenting on Award 31, state that the Board in that case heard the same Carrier arguments as propounded by Carrier in the instant case and rejected them.

The Clerks categorize Award 31 of **PLB 843** as res judicata on this property, since it involves the same parties and the same agreements. As additional support for **ths** position, the **Organization** cites Third Division Award 22038 (Roukis), which reads, in relevant part:

"**Accordingly, having** thus found **that** Decision No. 6 /of a special board on the property/ is controlling, we **must**, of necessity, affirm that this decision is directly relevant to this property only and must not disturb or contravene the generally accepted application of other like rules on other properties. If the parties wish to change this **construction**, they **must** do so through the collective bargaining process."

Carrier defends by asserting that the Clerks have not prwed exclusive system-wide rights to the **performance** of the work claimed by the Clerks. Carrier also denies that Award 31 of **PLB 843** is applicable to the present case in two major respects:

the claim decided by **PLB 843** arose in the **1960's**, prior to the TOPS **system** and the TOPS agreement with the Clerks; and that the work considered by **PLB 843** involved compiling and typing of messages by dispatchers -- which is not the type of work included in the instant claim.

Carrier also contends that Award 31 was improper and a violation of the Railway Labor **Act** in that no third party notice was issued to the Train Dispatchers as interested third party. The Train Dispatchers in their submission essentially take the same position as Carrier, contending that they were not notified of the dispute which was decided by **PLB 843** in its Award 31 and that since that Board interpreted the Dispatcher' Agreement without its presence and knowledge, Award 31 was a nullity.

Carrier also argues that Chief Dispatcher Kennedy's instructions cannot be construed as an exclusive **reservation** or grant of work to clerical **employees**. Instead, the Chief Dispatcher's April 19, 1973 memorandum states that Assistant Chief Dispatchers "should" delegate **some** of their "clerical" duties to clerks in order to allow them more time for "crews and power and **supervisions** of Train Dispatchers."

Carrier insists that the disputed work is not reserved exclusively to clerks and that unless it has restricted itself by agreement, the assignment of work necessary for its operations is an inherent management prerogative.

Carrier maintains that both the Clerks and the Dispatchers have continued to perform the same type of work done prior to the **implementation** of TOPS and **the assignment** of the **three Assistant** Chief Dispatcher positions on a trial basis, although the methods have changed due to the computer installation. In short, Carrier states, dispatchers continue their past practice of collecting train operating data which they turn over to clerks for further processing and/or **input** to TOPS. Under the 1971 TOPS agreement, Carrier states, clerks enter all the information involved in this dispute to TOPS; the TOPS agreement does not require any particular procedure or method to be followed in furnishing such information to the clerks. Carrier's Ex Parte Submission comments on this point: "How the clerks obtain the information involved to put into TOPS, in what form they obtain it, and from whom or where they obtain it is not a legitimate concern of the clerks."

Before turning to the **merits**, we **must** address **ourselves** to Carrier's objection that the instant claims are untimely and, therefore, should be dismissed. Carrier's position is that the new changes and procedures were placed into effect in 1971, when TOPS was introduced, but that the claims were filed in 1974, long after the 60 day requirement specified **in** the Agreement.

The Clerks take the position that the claims are attributable to the Carrier's assignment of clerical work to the positions of Assistant Chief Dispatcher which were established **on** February 16, 1974 and that the claims, filed on March 27, 1974 are, accordingly timely.

It **is** our opinion **that** Carrier's time limit argument is **invalid and** must be dismissed, since the incidents complained of arose at the time of, **and** as a result of, the alleged **assumption** of clerical duties by the three Assistant Chief Dispatchers at various times during the first week that they were first assigned to that position **in** 1974.

In addressing ourselves to the merits, we first consider the **precedential** significance of **Award** 31 of Public Law Board 843, which was decided September 16, 1974, about six months after the filing of the claims before us. In short, is Award 31 the "law" **on** this property?

As we read the record, the incidents giving rise to the dispute handled by **PLB** 843 took place in 1963 at Bakersfield, California, **long** before the installation of TOPS. Moreover, the work complained of by the Clerks at that **time** consisted of compiling, handling, and typing messages **on** the **following enumerated** matters: passenger train lineup, livestock, cabooses, bad order cars, excessive loads, including calls on passenger and freight trains.

Compiling, handling and typing messages -- the work at issue before **PLB** 843 -- differs in significant respects from the work **complained** of herein. The claims **in the** instant case, described almost verbatim **supra**, have the following **common** characteristics:

1. They charge that one Assistant Chief Dispatcher obtained information on power or bad order units from another **Assistant** Chief Dispatcher or from the "Mountain Dispatcher" and that such action **either** by-passed a clerk on duty **or** constituted "clerical work".

2. They charge that an **Assistant** Chief Dispatcher used **Form** 236 and "performed clerical duties assigned to clerk's position."

3. **In** two of the incidents, the Assistant Chief Dispatcher gave the information -- one dealing with bad order locomotive units and the **other** with power swap -- **to a** clerk.

There is no detailing in the charges as to precisely what were the "clerical duties assigned to clerk's position" or "clerical work of **obtaining** information on power swap" allegedly performed by the Assistant Chief Dispatcher which violated the Clerks' Agreement. There is no specification of the means by which the Assistant Chief Dispatcher "obtained information" from another **Assistant** Chief Dispatcher or from the "Mountain Dispatcher" -- and how and in what manner this constituted "clerk's work" as charged.

In any event, it seems **clear** to us that the work in dispute in the instant case differs significantly from that which was the subject of Award 31 of PLB 843, and that Award 31 is distinguishable in that it involved dispatchers doing typing and other work of a purely clerical nature not incident to their **duties**.

Building on the decision in Award 31 of **PLB** 843, the charge is made that the position of Assistant Chief Dispatcher does not under any circumstances contemplate the performance of clerical work; that the duties of these positions are entirely supervisory in nature and do not contemplate compiling Carrier's forms or drawing information from forms and **communicating** that information to **clerical employees**.

Contrary evidence is present in the Chief Dispatcher's April 19 and November 13, 1973 memos, which reveal that Assistant Chief Dispatchers had been filling out forms and reports. The April 19 memo directs Assistant Chief Dispatchers to review dispatchers' and/or yard delay sheets and inform **Clerks** of changes

to be made or dictate the changes. The November 13 memo, Item 4, requires Assistant Chief Dispatchers to maintain the TOPS report of trains "projected to run from your various yard."

As we have earlier indicated, the Clerks' Organization has cited to-us Third Division Award 22038 (**Roukis**), as exemplifying the principle of res judicata. A close reading of that Award disclosed that **the claim** in a prior case, which decided the issue presented in Award 22038, involved "circumstances identical to those here present." (underlining added). No such identity of circumstances can be found, in our judgment, between the activities present in Award 31 and those involved in the case here under consideration.

The question still remains, **however**, as to whether the work complained of herein falls within the Clerks' Scope **Rule**. To this issue we now turn.

The most informative and explicit information bearing on this question is a statement by Chief Dispatcher **Kennedy** which outlines and **compares** how various reports were handled and reported at **Roseville** prior to and following the inception of the TOPS system. The section of his statement most relevant to the aforementioned claims is titled **POWER FAILURES & CHANGES** and reads:

"Prior to inception of TOPS, **power** failures or **changes** were not reported to anyone except to next Engine Maintenance facility usually by phone or occasionally by message by **Assistant** Chief Dispatcher. Other than occasionally typing a message, clerks did **not** at any time enter into **this** phase of the operations. With the introduction of the Power Bureau, these were reported on the periodic report that was compiled by the Assistant Chief Dispatcher usually in longhand and **sent** to San Francisco by FAX. This **information** is now entered into the computer. At the inception of this program, **Assistant** Chiefs were furnished a form more or less a replica of a computer card **to** assist **out** inexperienced key punch operators. As out key punch operators became more proficient,

"the **form was** abandoned and keypunch operator either checks with trick dispatcher to see if anything to report or is handed a **memo** or **in-**f-d verbally of necessary information to be entered into computer. This is **done** by trick dispatchers, assistant chiefs, **and** at times by chief dispatcher."

Inasmuch as the claims filed by the Clerks were directed at the three Assistant Chief Dispatcher positions created as a result of the Carrier-Train Dispatcher Joint Committee **recommenda-**tions, Chief Dispatcher **Kennedy's** statement also addressed itself to the work they performed during the six **months'** trial period, in the following terms:

"TEMPORARY SET OF ASSISTANT CHIEF DISPATCHERS

'The Dispatchers Organization filed an **overload complaint** and as a result of a joint board investigation, an extra set of assistant chief dispatchers were established in this office for a test period from February to September 1974. At the conclusion of the test period it was decided they were not necessary and were abolished. These jobs were not assigned any territory but used to assist regular positions in any way possible. This included checking delay reports before entering into computer, updating sight reports, informing key punch operator of **unit** failures & changes, etc. No deviation from handling of reports as described **above** was made, The only difference being which individual handled particular incident, the regular assigned assistant chief or the so called rwer chief. At no **time** did these positions perform clerical work."

The record **contains** a similar statement dealing with the procedures at the Eugene (Oregon) Dispatcher's Office, as follows:

"(3) Engine Failures. Before TOPS, failed engines were reported to those concerned by message. The Assistant Chief Dispatcher would dictate a message, complete with addresses, to the stenographer-clerk, who would type the message for transmission by the **Communications** Department."

"**Under** the TOPS system, the Assistant Chief Dispatcher records engine failures **on** the 'Power **Change** and/or Failure Worksheet' and the stenographer-clerk **enters** to TOPS."

The Clerks' Organization, in rebuttal, submitted the following statement by a former Assistant Chief Dispatcher who was assigned to one of the three positions **in** question during the **six months** trial period:

'While working position 383 assistant chief dispatcher I was at no time responsible for the **movement of trains** on a division or assigned territory involving the **supervision** of train dispatchers and other similar employees nor was I at **any time** responsible for the supervision of the handling of trains or the distribution of **power** crews and equipment incident thereto.'

"These duties remained the sole responsibilities of the other 4 previously assigned assistant chief dispatchers north, south, east and west."

"My duties were of clerical **nature**."

We are thus confronted with conflicting statements by the Chief Dispatcher **and** the former Assistant Chief Dispatcher. The latter's **statement** adds no probative evidence other than the **assertion** that his "duties were of clerical nature." By contrast, Chief Dispatcher **Kennedy's** statement described with some degree of specificity and detail the work performed by Assistant Chief Dispatchers to substantiate Carrier's position that Assistant Chief Dispatchers did not perform clerical work. Based on the entire record before us, we are of the opinion that the evidence submitted by the Chief Dispatcher is entitled to greater weight and credibility.

The initial claim by the Clerks, dated March 27, 1974 addressed to Superintendent Robinson charged that the Assistant Chief Dispatchers were performing clerical duties "in direct conflict with instructions from C. L. K., Chief Dispatcher." (Underlining added).

Chief Dispatcher Kennedy's April 19, 1973 memo directed Assistant Chief Dispatchers to delegate certain listed work to clerks.

In our judgment, the Chief Dispatcher's directive or instructions did not constitute an exclusive grant of jurisdiction to clerks to perform the listed work. It is not clear that the Chief Dispatcher had the authority **under** the applicable **Rules** Agreement to make exclusive work assignments or to transfer work from **one** craft to another. Only the agreement between the parties could make such **assignment**; the agreement is controlling. The Chief Dispatcher's instructions were not a part of the agreement between the parties, but merely operating instructions and cannot be construed as part of the agreement. The Chief Dispatcher is not empowered to write rules for the company.

Carrier cites **on** this point Award 36 of Public Law Board 843 involving the parties here in dispute. That Award held:

'The Brotherhood refers to the directive of A. W. **Kilborn**, dated December 24, 1963, and claims that if the directive had **been** complied with the Claimant would have been called. Carrier contends that the directive does not have the force of an agreement rule and does not **confer any rights on** the Claimant. Whatever rights the **Claimant has** are found in the Agreement alone. The Carrier, in support of its position, cites several Awards of the Third Division. We concur in the holdings in those Awards."

This Board concurs in the decision enunciated in Award 36 of **PLB** 843.

Chief Dispatcher Kennedy's April 19, 1973 **memorandum** instructed Assistant Chief Dispatchers to delegate to clerks the tasks of filling out **forms** and performing other "clerical" duties which Assistant Chief Dispatchers **had** been doing. (Quotation marks in the original memorandum). The memorandum did not state that the **forms** and "clerical" duties referred to constituted work which belonged to Clerks.

Chief Dispatcher Kennedy's November 13, 1973 memorandum was updated by a supplemental notice dated November 15, 1973 **addressed solely** to TOPS CLERK-Office. The notice specifically directed such clerks to obtain information in accordance with the following instruction:

"My W/430/13 of November 13th in connection with reporting engine failure, helper, updating sight reports, etc.

"There is no objection to **getting** this information from either Asst Chief Dispatcher or Train Dispatcher, in other words, if one of them is busy then you should **ask** the other one to furnish information to your **/sic/**.

Notwithstanding that TOPS clerks were instructed to obtain information from either the Assistant Chief Dispatcher or Train Dispatcher, the basis for claims 2 and 3 listed earlier was that the **Assistant** Chief Dispatcher had relayed information on bad order units to the TOPS clerk.

The thrust of Chief Dispatcher Kennedy's April 19, 1973 memo was that Assistant Chief Dispatchers were "busy with reports", and his instruction to clerks to assume certain specified work was, in his words, to "alleviate the situation" so that the Assistant Chief Dispatchers could be more effective in "handling of crews and watching railroad." It seems clear to us, from his language that Assistant Chief Dispatchers had been compiling reports, and had been doing so for some time, and that they had **been** doing the work complained of prior **to the issuance** of his instructions. There is no evidence **in** the record before us **that** the Clerks' **Organization** had filed any claims that such work on "reports" by Assistant Chief Dispatchers violated the Clerks' Agreement.

The Rules Agreement between the Clerks and the Carrier was effective November 15, 1971 and the TOPS agreement two months earlier, on September 16, 1971. Chief Dispatcher **Kennedy's** first memorandum to Assistant Chief Dispatchers and to Clerks was dated April 19, 1973 -- about one and one-half years after the effective dates of these agreements. The second series of instructions were issued November 13 and 15, 1973, respectively -- two years after

the effective dates of these agreements. Thus, for at least this period of time -- **and** even prior thereto (according to the Chief Dispatcher's statement) -- Assistant Chief Dispatchers had been **performing the** work which gave rise to the claims before us, without, it appears, any objection by the Clerks. The statements previously referred **to by** Chief Dispatcher Kennedy describing the operations of the Dispatcher's Office at Roseville, and by Chief Inspector **Mayberry** describing the procedures at Eugene would indicate that Assistant Chief Dispatchers at both locations had been **performing** the disputed work before the establishment of TOPS and subsequent thereto.

The **Organization** maintains that Third **Division** Award 19318 (O'Brien), involving the same parties on this property represents case law for these parties which should be controlling in the instant case. Award 19318 found that the work **in dispute in that** case, which had **been** assigned to Carmen, was not, as claimed by Carrier, incidental to the Carmen's **assignment**. The Award then stated:

"Rather, we are of the opinion that the disputed work is of the kind that has been performed by Clerks historically **in the past**. It is clerical work and **must** be performed by **employees** of the Clerks' **Organization**. To hold otherwise would be obviating the **Clerks'** Scope Rule which reserves to the Clerks clerical work customarily and historically performed **by** employees of their craft. The disputed work performed in the Freight Train Yard Car Foreman's office is this kind of clerical work. To allow employees not **covered** by the Clerks' Agreement to perform this work would infringe on the collective bargaining agreement, duly negotiated by the parties hereto. This we are unwilling to do."

But as we have noted, and the evidence before us so indicates, the specific work in dispute in the instant case **has** not been "customarily and historically performed" by Clerks on this **property**. This is true, based on the evidence, **both** at **Roseville** and at Eugene.

Even in the absence of any other substantive evidence that **clerks** had previously performed the claimed work, and without **intending** to define "customarily and historically performed" **in** terms of a specific period of time, it is **difficult to** see how a claim filed **in** March 1974, based on a claim of violation of a Chief Dispatcher's instructions issued April 19, 1973, November 13, 1973, **and** November 15, 1973, can fall within the concept of "**customarily** and historically performed" so as to recognize the work covered by the claim as within the Clerks' exclusive right and jurisdiction.

Carrier has consistently maintained that the work complained of was not reserved exclusively to clerks by the Clerks' Scope **Rule**, and that such work has not been performed by clerks historically, traditionally and customarily, **system-wide**, to the exclusion of all others. Based on **the** entire record before us, we **find** no support for the Clerks' contention that **the** Assistant Chief Dispatchers, on the dates specified, performed clerical work "which had for many years prior thereto been assigned to and regularly performed by clerical forces **working** under the Clerks' Agreement." Accordingly, we must 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

That the Agreement was not violated.

Award Number 22689
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A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 14th day of December 1979.
