

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23382  
Docket Number CL-23027

James F. Searce, Referee

**PARTIES TO DISPUTE:** {Brotherhood of Railway, Airline and Steamship Clerks,  
Freight Handlers, Express and Station Employees  
{Detroit, Toledo and Ironton Railroad Company

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood (GL-8807) that:

(a) The Carrier violated the Rules Agreement dated May 1, 1966, amended January 1, 1971 particularly Rules 1, 2 and 6, February 7, 1965 National Job Stabilization Agreement and others, when it allowed and permitted sub-contractor, (Motor Rail Delivery Systems) and Yardmasters to perform clerical work at King Road, Woodhaven, Michigan. Historically this work was performed by employee represented by the Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees. D. F. Beavers, Seniority date 10/3/49, Machine Operator & Bill clerk, Tour of duty: 11:00 P.M. - 7:00 A.M., Rest Days: Saturday and Sunday, is willing to perform this work, but the Carrier as of this date has not assigned this work covered by the Rules Agreement.

(b) The Carrier now be required to compensate D. F. Beavers \$57.00 plus \$1.92 COLA at the punitive rate, commencing November 15, 1976, and to continue for each and every work day until the violations are corrected.

(c) Claim is filed in accordance with Rule 25.

**OPINION OF BOARD:** It is uncontested in this record that prior to May, 1975, Carrier utilized clerical employees to perform certain clerical functions in connection with the Carrier's piggyback operations at Rouge Yard, Dearborn, Michigan. It is also a fact that at Rouge Yard Carrier employed without complaint an outside contractor in connection with the piggyback operations.

Subsequent to May, 1975, Carrier discontinued its piggyback operations at Rouge Yard and initiated piggyback operations at Woodhaven Yard, Woodhaven, Michigan. There have been no clerical employee headquartered at Woodhaven Yard since 1965. Carrier did -and still does - employ Yardmasters at Woodhaven Yard. With the advent of the piggyback operations at Woodhaven Yard, Carrier utilized the Yardmasters and an outside contractor to perform the necessary service in connection with the piggyback handling. The Yardmasters, in addition, continued to perform all of the other functions previously performed by them at this facility. As a result, Petitioner initiated and progressed the claim as out-

lined in the **Statement of Claim supra alleging** that Carrier **violated Rules No. 1, 2 and 6** as well as the **February 7, 1965 National Job Stabilization Agreement.**

Rule No. 1 is titled **Scope.**

Rule No. 2 is titled **Definitions - Clerks.**

Rule No. 6 is titled **Bulletins.**

For brevity we **will not quote the complete contents** of these Rules. **From** the arguments advanced by the parties it is **apparent that the gravamen** of this dispute **lies** in the alleged transfer of certain clerical work, formerly **performed by clerical employees** at Rouge Yard, to **Yardmasters** at Woodhaven Yard.

After **having reviewed the voluminous** record in this case **and** having considered the arguments ably presented by **both** parties, it is our conclusion, first, that the **February 7, 1965 National Stabilization Agreement** is not involved in this dispute **and**, if it were, this **Board would** be without jurisdiction to resolve such a dispute because that National Agreement contains its **own** procedures for **adjudication** of disputes **thereunder.**

Second, Rule No. 1 - **Scope**, in pertinent part, provide8 **as follows:**

"\* \* \* \*

(b) This Agreement shall not apply to:

\* \* \* \*

**4. Employees** of other **crafts**, and the work they perform, whose duties require them to **perform** clerical work, such as **yardmasters**, assistant **yardmasters**, agents, assistant agents, special agents (policemen), material inspectors **train and engine men, mechanical department draftsmen \* and helpers \* and laborers \***, telegraphers, employees who handle orders or messages affecting the **movement** of trains, or who operate interlocking plants or **movable** span bridges."

\* \* \* \*

(d) **3.** This Agreement shall not prohibit employees not covered by this **Agreement from** performing clerical work incidental **and** necessary to their regular assigned duties, providing such **assigned** duties do not **come** within the purview of this Agreement. No work **normally performed** by an employee covered by this Agreement shall be performed, transferred or assigned to an employee not covered by this Agreement without discussion and agreement between the Management and the Local **Chairman."**

**"\*It is understood that the positions are subject to a Memorandum of Understanding dated November 23, 1970."**

It is apparent in this case that **the Yardmasters at Woodhaven have and may** properly continue to perform those "incidental and necessary" functions which **have** historically been performed by them. However, the clerical functions relative to the piggyback operations which were "within the purview of **this Agreement**" by reason of having been performed by clerical employees at Rouge Yard and on which there was no "discussion and agreement between the **Management** and the Local **Chairman**" prior to their having been transferred **and assigned to the Yardmasters at Woodhaven Yard**, are being performed by the **Yardmasters at Woodhaven Yard in violation of this Scope Rule.**

As for the allegations relative to the use of the **outside** contractors, there is no probative evidence **in this** record to indicate **that the** outside contractor at Woodhaven Yard is functioning any differently than **did** the outside contractor at Rouge Yard.

As to the **damages** issue, we **remand** this to the parties **and direct** them to jointly determine on a direct relationship **basis** the amount of time - on a minute basis - **consumed by the Yardmasters at Woodhaven Yard incident to the performance of clerical work** of the same **nature** as formerly performed by clerical **employees** at Rouge Yard directly related to the piggyback operation **only. Payment** under this determination **is** to be **made** at the pro rate clerical rate.

All **other aspects** of this dispute are found to be unconvincing or inapplicable and are denied.

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** violated to the extent outlined in the **Opinion of Board.**

A W A R D

**Claim disposed of as per Opinion of Board.**

ATTEST:



Executive Secretary

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Dated at Chicago, Illinois, this 15th day of September 1981.