

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number **23463**

Docket Number CL-23050

Martin F. **Scheinman**, Referee

(Brotherhood of Railway, **Airline** and Steamship Clerks,  
( Freight Handlers, Express and Station **Employees**  
PARTIES TO DISPUTE: (  
(The **Chesapeake** and Ohio **Railway Company**

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood (GL-8827)  
that:

(a) The Carrier violated Rule 1 and others of the Clerks' General Agreement during the hours of **6:30** A.M. and **2:30** P.M. on February 6, 1972; during the hours of **10:30** P.H. February 6, to **6:30** A.M., February 7, 1972, and during the hours **from 6:30** A.M. to **2:30** P.M. on February 10, 1972 when they required and **allowed Trainmen**, another craft and class, to perform messenger duties.

(b) Claimant, Mrs. M. J. Bowling now be allowed eight (8) hours pay at the pro rata rate of \$34.97 per day account the violation which occurred on February 6, 1972 between the hours of **6:30** A.M. and **2:30** P.M.

(c) Claimant J. E. Lisk now be **allowed** eight (8) hours pay at the pro rata rate of \$34.97 per day account the violation which occurred during the hours of **10:30** P.M. February 6, to **6:30** A.M., February 7, 1972.

(d) Claimant Mrs. T. J. Nye now be allowed eight (8) hours pay at the pro rata rate of \$34.97 per day account the violation which occurred on February 10, 1972 between the hours of **6:30** A.M. to **2:30** P.M.

OPINION OF BOARD: The Organization claims that Carrier violated the Scope Rule, Rule 1, when it allowed **Trainmen** to perform messenger duties on the following dates: February 6, 1972 between the hours of **6:30** a.m. and **2:30** p.m.; February 6th and **7th**, 1972 **from 10:30** p.m. to **6:30** a.m.; and **6:30** a.m. to **2:30** p.m. on February 10, 1972. It asks that certain **enumerated** claimants be **compensated** for work that they would have **performed** had Carrier not assigned it to the improper craft.

Carrier, on the other hand, claims that the Organization does not have the exclusive right to perform the duties in question. Therefore, it asserts that no violation occurred.

On February 6, 7 and 10, 1972 during the above-noted times, the **pneumatic** tube system which **normally** was used to transport lists between the **Union** **Head**, the Office, the Towers and other locations **was** inoperative. Since the pneumatic tube system was not functioning, the Carrier permitted Trainman to deliver switch lists to the Towers, rather than **calling** in a **clerical employee** to **perform** such tasks.

The **Organization** and the Carrier recently presented the **same** underlying issue to this Board (George S. **Roukis**, Referee) in Docket No. CL-22974. By Award Number **23053**, dated November **14, 1980**, we denied the grievance and held that the Scope Rule was not violated when **Trainmen** were used to deliver switch lists to Car Retarder Operators in the Hump Towers at times when the **pneumatic tube system was** inoperative. We held therein that clerks do not have the exclusive entitlement to perform work pertaining to the pneumatic tubes. Nothing presented here convinces us that our decision there was improper. As such, consistent with the time honored doctrine of stare decisis, we will deny the claim in **its** entirety.

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 Employee involved in this dispute are respectively Carrier and **Employee** 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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By **Order of Third Division**

Attest:

*A. W. Paulson*

**Executive Secretary**

Dated at Chicago, Illinois, this **8th** day of **December** 1981.

