

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24814  
Docket Number CL-24547

George V. Boyle, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,  
(Freight Handlers, Express and Station Employees

PARTIES TO DISPUTE:

(  
(Union Pacific Railroad Company - Western Districts

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood (GL-9610)  
that:

1. The Carrier violated the Clerks' Agreement dated May 16, 1980 when on May 18, 1980 Carrier utilized Road Foreman of Engines, G. W. Underwood, to transport a "dog-catch" crew on duty at 9:30 pm from Milford, Utah to Upton to relieve a crew tied up under the Hours of Service Law.

2. Carrier shall now be required to compensate claimant, extra furloughed Clerk, Barbara Jones, for 8 hours pay at the rate of crew dispatcher for date of May 18, 1980.

OPINION OF BOARD: The facts which give rise to this dispute are not a matter of disagreement between the parties. On May 18, 1980 the Carrier was required to transport a relief crew from Milford, Utah to Upton, Utah, a distance of over five (5) miles. The relieved crew in Upton was then transported back to Milford. This was accomplished by Road Foreman of Engines, Underwood.

The Employees assert that, under the Scope Rule, the work of transporting crews is that of the Clerks and that, instead of using Underwood, the Carrier had the obligation of calling the Claimant, Barbara Jones, an extra furloughed employee who was available and had the right to perform this duty.

It is their position the Scope Rule, which heretofore was general in nature, "was amended on May 16, 1980 to a Position or Work type Scope Rule which does not require the employees to prove system-wide exclusivity."

To buttress their position the Employees' cite numerous awards as controlling among these are:

- 1) Award No. 19719 is a 1970 case which involved the abolition of the last clerical position at Searport, Me. and the subsequent reassignment of duties to other crafts which was disallowed.
- 2) Public Law Board No. 2625, Award No. 1, a 1976 case, recounts bargaining history which indicates that the parties, (BRAC and Illinois Central Railroad), agreed "that section Rule 1, Scope Section 1(d) has the effect of 'freezing in place' as of November 1, 1974 the work then performed at various locations around the system by employees covered by the agreement."
- 3) Public Law Board No. 954, Award No. 1, which posits that where the Carrier had created a Chauffeur position to transport materials it could not assign a laborer to drive trucks to perform the same work while relying upon a defense that the amount of work was negligible, only occasionally performed, economical and that others performed the work for "many years."

The Carrier, in defense, responds that the Scope Rule does not give the Clerks exclusive right to transport crews. They argue that the Rule describes normal duties not exclusive duties.

Among others they cite the following awards:

- 1) Award No. 17739, a 1967 case which is identical to this one, in which a Trainmaster transported a dog-catch train crew from Milford, Utah to Lund, Utah and the Employees Claimed a violation of the Scope Rule. In denying the claim, the referee held: "Insofar as the Scope Rule is concerned it is general in nature, thus placing upon the Organization the burden of proving that the job of transporting employees from one station to another, has been reserved to positions under the Clerk's Agreement exclusively; further, that the reservation of such work has been the traditional and historical custom and practice on the property. The evidence before us indicates otherwise, that is, that employees other than those covered by the Clerks' Agreement, have been transporting employees both in privately owned and Company owned automobiles over a long period of time."
- 2) Award No. 19789, a 1968 case, which deals with the transportation of materials and denies the claim, adding, "Similar claims have come before this Board on so many occasions that the principle should be considered stare decisis."
- 3) Award No. 21485, a 1975 case, which denied a claimed violation of the Scope Rule involving assignment of a taxi service to transport crews. The Referee held, "A review of the Agreement and the record indicates that the work here in dispute is not the exclusive right of petitioners."
- 4) With respect to the Claimants citation of Public Law Board No. 2625, Award No. 1. The Carrier points out that Award No. 4 of this PLB holds "...This Rule 1(d) has the effect of reserving the Agreement - covered employees no less but no more of such work... Rule 1(d) is a shield against diminution of that work through distribution by Carrier to strangers to the Agreement..."

While the Organization avers that the Carrier - cited cases might have been controlling before May 16, 1980, but that the Scope Rule was changed from a general rule to a Position or Work type Scope Rule, they do not cite any specific wording change in support of this contention. The Petitioner has the burden of proof to produce evidence in support of its position and in the opinion of this Board they have failed to do so.

From the evidence and citations produced here the Board concludes that the petitioner did not have exclusive right to such work before May 16, 1980 and has failed to demonstrate that it acquired such rights on or after that date.

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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

  
Nancy J. Decker - Executive Secretary

Dated at Chicago, Illinois, this 16th day of May, 1984