

NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 26597

THIRD DIVISION

Docket Number CL-26062

Gil Vernon, Referee

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

PARTIES TO DISPUTE:

(Norfolk and Western Railroad Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood (GL-9937) that:

1. Carrier violated current Clerks Agreement (Master Agreement effective April 1, 1973), Rule One Scope and Rule 39 holidays, when Employes that are not members of our class or craft bid, signed for and received radios without benefit of a clerical **employee** being on duty. This violation **occured** on July 4, 1983, a holiday.

2. Carrier shall be required in view of said violation to compensate J. E. Saul eight (8) hours' pay at the rate of time and one half for the date of July 4, 1983, specifically the 11:00 p.m. to 7:00 a.m. shift, West Yard clerk position."

OPINION OF BOARD: Only the most basic of facts are not disputed. It is agreed that the day in question, July 4, 1983, was a legal holiday and all clerical positions were blanked with the exception of 6th Relief Chief Caller which worked the position of Chief Caller, 11:55 P.M., July 4, to 7:55 A.M., July 5, 1983. On July 5, 1983, furloughed Clerk H. O. Cumbridge was called to report at 6:00 A.M. to fill the position of the vacationing West Yard Janitor. No extra board clerks were available to fill this position. On the date in question, Cincinnati District Extra Conductors H. R. Glaze and G. Lewis requested an emergency radio to be used on their trip for which they were reporting. It is agreed someone issued Radios 74506 and 73289 to Conductors Glaze and Lewis at 6:20 A.M., July 5, 1983, but it is disputed who issued them. The Organization claims the Conductors issued the radios to themselves. The Carrier claims Clerk Cumbridge checked out the radios to the Conductors.

Thus, a factual finding is necessary at the outset. Only if the Conductor checked out the radios can any potential dispute arise as to whether this violated the Scope Rule. In this respect, the Board must conclude on the record before it that the Union has successfully rebutted the Carrier's assertion that Cumbridge checked out the radio.

Accordingly, the Scope Rule issue is squarely before the Board. The relevant portion of Rule 1 and Rule 39 reads as follows:

"Rule 1 - Scope

(a) These rules shall govern the hours of service and working conditions of employes engaged in the work of the craft or class of clerical, office, station, tower and telegraph service and storehouse employes as such craft or class is or may be **defined** by the National Mediation Board.

Positions of work within the scope of this Rule 1 belong to the employes covered thereby and nothing in this Agreement shall be construed to permit the removal of such positions or work from the application of these rules subject to the exceptions hereinafter set forth and except in the manner provided in Rule 70.

Rule 39 - Holiday Work

Work performed on the following legal holidays -- namely, New Year's Day, Washington's Birthday, Good Friday, Memorial Day, Fourth of July, Labor Day, Veteran's Day, Thanksgiving Day and Christmas (provided when any of the above holidays fall on Sunday, the day observed by the state, nation or by **proclamation** shall be considered the holiday, shall be paid for at the rate of time and one-half."

It is the position of the Organization that Rule 1 is not general in nature since it sets forth positions or work. Thus, in their opinion, it **is** not required to establish by a preponderance of evidence that the work in question was exclusively performed by the Clerical employes, it is only required that the work is traditionally, historically and customarily performed by the clerical craft. Therefore, since the evidence meets this test, they believe the claim should be sustained.

The Carrier in its argument emphasizes evidence which shows that the work **of** issuing radios is performed by several crafts and classes of employes. They also note Rule 1 does not mention the disputed work. Thus, against these facts, the Carrier argues that the claim cannot prevail since it is well settled that the **Employes** have the burden to prove by creditable evidence that a particular duty through custom, practice and tradition belong exclusively to them.

In this case, the evidence is **uncontroverted** that the work in question **is** shared work and has been for a long period of time. Accordingly, the issuance of two radios on an isolated basis by other than Clerks cannot be considered "removal" of the work for the purposes of Rule 1. Therefore, the **claim** will be denied.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes 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

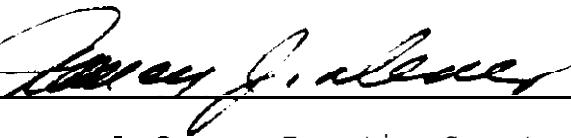
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 27th day of October 1987.