

The Third Division consisted of the regular members and in addition Referee John E. Cloney when award was rendered.

PARTIES TO DISPUTE: ((Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
(The Atchison, Topeka and Santa Fe Railway Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood
(GL-10107) that:

(1) Carrier violated the intent and provisions of the current Clerks' Agreement at Fort Carson, Colorado on May 23, 1985 by failing and/or refusing to allow an employe covered by the Agreement to sign Bills of Lading, and

(2) Carrier shall now pay Mr. G. J. Krizek a minimum three hour call, pro rata Cashier rate for May 23, 1985 as result of this violation, and

(3) Upon expiration of 60 days from the original date of submission, Carrier shall also pay 15% per annum, interest on the amounts claimed."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

Claimant is assigned to an Interchange Clerk Position at Pueblo, Colorado. On May 10, 1985, the Agent-Cashier Position No. 6011 at Colorado Springs, Colorado, was abolished. Before being abolished, the position accepted and signed Bills of Lading from the Transportation Office at Fort Carson, Colorado. Fort Carson is approximately 45 miles from Pueblo.

On May 23, 1985, a Trainmaster signed two Bills of Lading from the Fort Carson Transportation Office. The Trainmaster is not covered by the Agreement.

Rule 1, the Scope Rule, provides:

"1-A These rules shall govern the hours, compensation, and working conditions of all employees engaged in the work of the craft or class of Clerical, Office, Station, Storehouse Tower and Telegraph Service Employees as such craft is, or may be, defined by the National Mediation Board. Officers or employees not covered by this Agreement shall not be permitted to perform any work or function belonging to the craft or class here represented which is not directly and immediately linked to and an integral part of their regular duties, except by agreement between the parties signatory hereto.

1-B Positions outlined below are generally representative of those within the craft or class:

Clerical workers and/or machine operators, station agents, manager-wire chiefs, wire chiefs, assistant wire chiefs, student wire chiefs, communication traffic controllers, towermen, levermen, block operators, car distributors, train order clerks, draw-bridgetenders and boat dispatchers.

Other office and station employees such as sorters, office boys, messengers, station helpers, baggage and parcel room employees, train and engine crew callers, switchboard operators and operators of certain office or station appliances.

Elevator operators, janitors, station, platform, warehouse, transfer, storeroom, stock room material handler or truckers, and others similarly employed."

Rule 2 - Grades of Work, provides in part:

* * *

"2-E Positions or work within Rule 1-SCOPE of this Agreement belong to the employees covered thereby and nothing in this Agreement shall be construed to permit the removal of such positions or work from the application of the rules of the agreement.

2-F When a position covered by this Agreement is abolished, the work assigned to same which remains to be performed will be reassigned to other positions covered by this Agreement, unless such reassignment of work would infringe upon the rights of other employees."

The Organization argues that as the incumbent of Position No. 6011 signed the Fort Carson Bills of Lading before that position was abolished, Rule 2-F requires that work to be assigned to a position covered by the Agreement. Accordingly, Carrier should have instructed the Transportation Officer to mail the Bills of Lading to Pueblo for signature. The Organization describes Rule 2-F as the "bedrock" of the claim and asserts the Rule was negotiated to prevent the work of covered employees from being eroded.

On September 30, 1985, in responding to the claim, Carrier asserted that signing Bills of Lading has never been performed exclusively by clerical employees and referred to various other classes of employees who sign such bills on a regular basis.

In reply to Carrier's position that the Scope Rule is general and therefore proof of exclusivity is necessary, the Organization contends it is untenable to argue that work assigned to a position covered by Rule 1 is not work covered by Rule 1. As the signing of Bills of Lading was work within Rule 1, the signing of Bills of Lading is reserved to employees covered by the Agreement by virtue of Rule 2-E and Rule 2-F and there is no need to show exclusivity according to the Organization.

As we read Rule 2-E it protects covered employees with reference to work falling within Rule 1, but it does not enlarge Rule 1 or secure to covered employees work not otherwise within its scope. Rule 1 is general and Rule 2 does not eliminate the need for proof of exclusivity.

In PLB 4157, Award 2 which dealt with this same Rule, it was concluded:

"The application of Rule 2 is predicated, however, on a premise of proof that the work in question is indisputably Clerk's work in the first place. The latter is the focal issue of the instant case Such issue is normally framed in the language of 'exclusivity' or the exclusive right to perform given work by a given craft under the protection of that crafts Agreement with a Carrier."

We believe that analysis is applicable here. Exclusivity has not been shown. Indeed Carrier's contention that these Bills are also signed by other crafts was not challenged on the property. Such lack of challenge is consistent with the Organization position that in view of Rule 2 exclusivity is not a factor. However, as indicated, this Board disagrees.

In view of our determination, the issues raised regarding amounts and type of compensation need not be considered.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 12th day of August 1988.