

The Third Division consisted of the regular members and in addition Referee Gil Vernon when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
(
(Missouri Pacific Railroad Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood
(GL-10045) that:

1. Carrier violated the Clerks' Agreement when, on the date of June 17, 1984, it abolished the position of Material Handler, Position No. 014, at its Dolton, Illinois, Mechanical Department, Yard Center and unilaterally assigned the duties of the position to Carrier Officers and crafts not covered by the Clerks' Agreement.

2. Carrier's action is in violation of Rule 1 Scope of the Clerks' Agreement.

3. Carrier shall now be required to compensate Claimant Donald Natonski, incumbent of former position of Material Handler Job No. 014, eight (8) hours pay per day at the punitive rate of abolished position, five (5) days per week, Monday through Friday, rate \$94.97 per day, until violation is corrected."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees 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.

Prior to June 18, 1984, the Carrier maintained a warehouse operation at Dolton, Illinois. The warehouse was staffed by one Material Handler position. The hours of this assignment were 8:00 AM to 4:30 PM, rest days Saturday and Sunday, rate of pay \$94.97. The position was attached to the Mechanical Department.

On June 11, 1984, the Carrier issues Abolishment Notice No. 67, abolishing the last remaining position under the Clerks' Craft and Class (Claimant's position) at this facility to be effective end tour of duty 4:30 P.M. on the date of June 17, 1984. Subsequently, the instant Claim was filed contending that Carrier officers and those employees not covered by the Clerks' Agreement were, subsequent to the abolishment of the position, performing the duties of the abolished position.

It is noted that, as a factual matter, neither the initial Claim nor the appeal to the Superintendent made any specific assertions as to who was allegedly performing Clerks' work, what work was being performed, or what dates it was being performed. The Terminal Superintendent in his declination stated the following:

"As I pointed out to you, Mr. Nationski is very vague in his claim, whereby he does not give any specifics such as names of people and the dates this work was being performed.

Our records only show where employees of other crafts did unload material pertaining to their work and picking up material in the storeroom they had to use in making repairs to cars and engines.

Since I cannot find where Carrier in anyway violated the controlling Agreement, your claim is respectfully declined."

On appeal to the Director of Labor Relations no specifics were given by the General Chairman in his January 8, 1985, letter. In his response to the Claim the Director of Labor Relations made several defenses but it is most pertinent to note the following:

"Our investigation into this matter does not reveal that anyone has been inventorying materials or stocking materials at Chicago. As you know, the loading and unloading of materials has not been reserved for exclusive performance by employees subject to the BRAC Agreement and has historically been performed by employees of the using department. What has been referred to as 'passing out' materials is more properly identified as the picking up of materials by the using department."

Subsequent to the Claims conference in a letter dated August 27, 1985, the General Chairman did make the following specific factual assertions:

"We refer to our statement in conference that on the specific date of August 7, 1984, an employee not covered by the Clerks' Agreement, namely Machinist W. Schuster, was used to store material into inventory. Additionally, on the specific date of August 8, 1984, noncovered employee, namely Machinist W. Schuster, was used to stock inventory.

Also, as pointed out in conference of this claim and others on July 12, 1985, it was pointed out that on specific dates of August 7 and 8, 1984, other than clerical employees, namely Machinist W. Schuster, R. Clark, L. Maire, R. Spaulding, J. Jones and A. Renders, unloaded store material from semitrailers MPZ 202508 and MPZ 253212.

Additionally, it was pointed out that on the specific date of August 20, 1984, an employee not covered by the Clerks' Agreement, namely Foreman J. Osborne, picked up a circuit breaker from Gray Bar Electric in Hammond, Indiana."

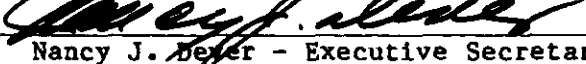
Significantly, the Organization has offered no specific facts or assertions of fact on the property countering the Carrier's assertion that the duties in question had not been performed exclusively by Clerks. It is well established to prevail in Claims of this nature that a showing of exclusivity must be made. Here there is no evidence of exclusivity or that the specific incidents mentioned in the General Chairman's letter of August 27, 1985, went beyond the duties incidental to the keeping of, as the Carrier states, "a small supply of materials on hand, to meet their (Mechanical Department Employees) immediate needs". The Carrier asserted without rebuttal that historically, to a certain degree, shop craft employees performed such work. There is not even evidence that the specific work identified by the Organization went beyond these historical proportions.

In view of the foregoing, the Claims on the basis of this record must be denied for lack of proof.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: 
Nancy J. Dexter - Executive Secretary

Dated at Chicago, Illinois, this 22nd day of September 1988.