Award No. 4723
Docket No. CL-4781

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Francis J. Robertson, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES

THE COLORADO AND SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes: (1) That the Carrier violated the Clerks' Agreement on October 16th, 1948 at Fort Collins, Colorado, by removing work of handling mail and baggage from C & S Train No. 29, and other incidental work normally and customarily performed by station forces at Fort Collins, Colorado from the scope of the Clerks' Agreement and hiring an outside party to perform same, and

(2) That Carrier pay to G. L. McCorkill, Car Clerk, and his successor or successors if there be any wage loss sustained from Carrier's action as set forth in Section 1 of this claim to the extent of one call (three hours' pay) retroactive to October 16, 1948, to date handling of the work is restored to employes covered by the Scope Rule of our Agreement with Carrier, effective July 1, 1924.

EMPLOYES' STATEMENT OF FACTS: On October 16th, 1948 the station force at Fort Collins consisted of:

1—Ticket-General Clerk	1—Supervisory Agent
1—Yard Clerk	1—Cashier
3—Telegraphers	1—Car Clerk

The work of handling mail, baggage, express, etc. to and from C & S passenger train No. 29 at Fort Collins, Colorado was removed from the scope of the Clerks' Agreement on October 16th, 1948 when the Carrier hired an outside party to perform this work.

For a considerable period prior to October 16th, 1948 a clerk was given a call (and paid under the Call Rule) to meet this train and handle the work of loading and unloading the mail, baggage, express, etc.

The work in question was turned over to an outside party; namely, Mr. Donald Eberle, Contract Drayman.

Mr. Eberle does not hold seniority under any agreement now in effect, nor has he ever established seniority under the rules of the Clerks' Agreement. (Emphasis supplied.)

have been abolished on account of this arrangement. It is merely for the purpose of permitting the carrier to fulfill its obligation to the U. S. Government in an efficient and economical manner, as is required under the terms of the Interstate Commerce Act and to expedite the movement of the train and passengers travelling on the train.

It is ridiculous to contend that the carrier cannot use an individual for a small amount of time to assist the regularly assigned employes in taking care of the loading and unloading of mail.

In view of the note contained in the Scope Rule, which has been previously quoted, and the use of an individual to perform special service to assist regularly assigned employes, we feel that the record in this case warrants a denial of the claim presented.

(Exhibits not reproduced).

OPINION OF BOARD: Carrier maintains a station force at Fort Collins, Colorado consisting of four clerical employes and three around-the-clock telegraphers. Northbound passenger train No. 29 is scheduled to arrive at Fort Collins each day at 11:03 P.M. Prior to October 16, 1948, Carrier called a clerical employe to assist the telegrapher and yard clerk who was on duty to assist in the loading and unloading of mail from the railway mail car. On October 16, 1948 Carrier made arrangements with an individual not in its employ to furnish such assistance for a payment of $25.00 per month and discontinued the call of the clerical employe. Employes assert that this action of the Carrier is violative of the Scope and Seniority Rules of the Agreement. Carrier relies on the Note to Rule (1) (Scope) of the applicable Agreement which reads as follows:

> "This agreement shall not apply to individuals where amounts of less than Thirty ($30.00) Dollars per month are paid for special services which only takes a portion of their time from outside employment or business or to individuals performing personal service not a part of the duty of the carrier."

That the work involved herein is work the type of which is included within the Scope of the Clerical Agreement appears to be an indisputable fact. As a matter of fact the contention of the Carrier in effect admits that for if it were not work which would otherwise be covered there would be no need to rely upon the exception contained in the Note to the Scope Rule to justify the action taken. Thus it is clear that the sole issue in this docket involves the interpretation to be given the above-quoted language of the Agreement. This issue is not a new one to this Board, it having been considered in other Awards in the early history of the Board. See Awards 302, 1432 and 1492.

In Award 302 we find the following statement: "The natural meaning of the language of Exception (a) to Rule 1 is that the services in question shall be in fact special services, and not regular services of the kind regular employes had been accustomed to perform under the agreement." We have no quarrel with the reasoning of the Board as reflected by this quotation. To hold otherwise would permit of breaking up the duties attached to regularly assigned positions into small segments and assigning the work to individuals holding no seniority rights under the Agreement provided they were paid less than Thirty ($30.00) Dollars per month for the services rendered. Obviously, that would be completely destructive of seniority and promotional rights under the Agreement. In the instant case, the services were performed with regularity by an employe holding seniority rights under the Agreement and are now being performed with regularity by an outsider. They are services which are necessary in the regular, everyday operation of the Carrier. Under these circumstances, we can come to no other conclusion than that the asserted exception contained in Rule 1 does not apply. It may be true as contended by Carrier that the present method of handling this work is the most practical and economical. However, the manner of accomplishment of this end is by

negotiation with the Employes and not by unilaterally removing work from the Scope of the Agreement.

Our attention has been drawn to early decisions of the United States Railroad Labor Board involving the American Railway Express Company and the Clerks' Organization which are offered as authority for the propriety of the Carrier's action. We are not satisfied, however, that the factual situations present in those cases were similar to the one with which we are herein faced. In any event, meaning no reflection upon that august tribunal, we believe that greater weight must be given to precedents established by this Board if there is a conflict of authority.

It follows from what we have said about that an affirmative award is in order.

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 thereon;

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 Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 17th day of February, 1950.