

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

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

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that the Carrier violated the Clerk's Agreement:

(a) When effective October 3, 1948 at Webb City, Missouri it assigned the working of passenger trains on Sundays and holidays to Train Porters not covered by the Clerks' Agreement; and

(b) That such work as is required and attaches to the positions of clerk each week Monday through Saturday shall now be restored to the Clerks involved and,

(c) That Mr. Fred B. Casner be compensated for eight hours at time and one-half rate Sunday, October 3, 1948, and each subsequent Sunday and holiday when duties attached to his position Monday through Saturday were assigned to and performed by employees not covered by the Clerks' Agreement and that Clerk Harold B. Cook be compensated on the same basis Sunday, October 3, 1948, and every Sunday and holiday up to and including Sunday, January 23, 1949.

EMPLOYEES' STATEMENT OF FACTS: Clerk F. B. Casner assigned to work six days per week 3 p.m. to 11 p.m., rate \$8.94, Monday through Saturday, performs the following duties:—

Sells tickets, handles U.S. mail, baggage and express to and from train No. 304, also checks baggage, checks, receives and delivers LCL freight, revises waybills, checks rates and routes, abstracting and janitor work.

Train No. 304 passes Webb City now at 8:43 P. M., and is worked by Mr. Casner each week day.

Clerk Harold B. Cook assigned to work six days per week 7:00 A. M. to 3:00 P. M., rate \$8.94 per day, Monday through Saturday, performs the following duties:

Sells tickets, checks baggage, handles baggage and express and U. S. mail to and from passenger train No. 303 (309), checks yard, makes car reports, switch lists, checks, receives and delivers LCL freight, expenses bills, bills LCL and CL freight, makes OS&D's, abstracts and janitor work.

Mr. Cook performed all duties attached to working train No. 303 up to January 30, 1949, at which time train was changed to No. 309 and effective

Unless the Post Office Department exercises its right to require the performance by railroad employees of the services referred to in Section 1742 above quoted, it may use its own employees to receive mails from and deliver them into the mail cars whether railroad company employees may or may not be on duty. There is no sound basis for the assertion of a claim by an employee organization of the right to perform a service which the railroad itself is not obligated to perform and which could not be performed exclusively by Railway Company employees under the postal laws and regulations governing the handling of United States mail.

The following paragraphs are quoted from the Opinion of Board in Third Division Award 4160 involving a claim similar in character to the instant dispute:

"This finding is not made under the Scope Rule and is based upon the custom and practice long established at the stations under consideration and relates exclusively to Trains Nos. 517 and 520 which later reverted to normal schedule, i. e., Sunday only.

As this finding is based upon custom and practice, and as there is apparently a conflict as between train crews and employees of the Organization, it is not the purpose to set a precedent of a finding under the Scope Rule, for, as apparently shown by the record of evidence in this case, different customs and practices are in use by the Carrier at various points on its system.

The finding is limited to the facts in this case, that is, by custom and practice, claimants had been doing this work. This is not to be taken away from them."

In that case, even though the claim was sustained, the findings were not made under the Scope Rule of the Agreement but were based upon the custom and practice long established at the stations under consideration.

The Carrier has shown that it is the traditional custom and practice for train porters to handle work such as is involved in the dispute here presented and that the employees' claims are wholly without merit, not supported by working agreement rules, custom or practice, and that they should be denied in their entirety. However, if the Board's findings are to the contrary, the claims should not be allowed for more than the pro rata daily rate of the employees' positions in accordance with the opinion of a long line of awards to which reference is made in Award 4244.

OPINION OF BOARD: Claimant Casner was regularly assigned six days per week, 3:00 P. M. to 11:00 P. M., Monday through Saturday, including holidays, with Sunday as rest day, as a clerk at Webb City, Missouri. His work consisted of selling tickets; handling mail, baggage and express to and from Train No. 304; the checking of baggage; the checking, receiving and delivering of LCL freight; revise bills, check freight rates and routes; abstracting and janitorial duties. Clerk Cook was regularly assigned 7:00 A. M. to 3:00 P. M., six days per week, Monday through Saturday, with holidays off after April 26, 1948. His duties consisted of selling tickets; checking baggage; handling mail, baggage and express to and from Train No. 303; checking yard; making car reports and switch lists; checking, receiving and delivering LCL freight; making expense bills on LCL and CL freight; making OS & D's; abstracting and janitorial work. Claimant Cook worked Train No. 303 until January 30, 1949 when its arrival time was changed so that it did not arrive during his tour of duty. The record shows that Train 304 passes Webb City at 8:43 P. M. each day of the week. Train No. 303 passed Webb City at 8:19 A. M. each day of the week until January 30, 1949 its arrival time was changed to 4:25 A. M.

The record shows that for many years it was the practice on this Carrier to have train porters handle mail and baggage to and from passenger trains and station locked boxes on Sundays and holidays when no station employees were on duty. On September 19, 1948, Carrier discontinued the train porter positions and a trainmeeter was assigned the train work on Sundays and

holidays. Two clerks made claim to this Sunday work and their claims were paid. Carrier thereupon abolished the trainmeeter position and the work was assigned to the train porters whose positions had been re-established. It is the contention of the Organization that as this handling of mail and baggage to and from these two trains is a part of their duties during the week, that it is their work on Sundays and holidays. It is urged, consequently, that it was a violation of the Agreement to assign this work to train porters on Sundays and holidays.

Rule 44 (b) of the current Agreement reads as follows:

"(b) Employees called to work on Sundays or assigned day off duty in lieu thereof and specified holidays, shall be allowed a minimum of eight hours at time and one-half rate, except as otherwise provided in Rule 50."

Rule 48 of the current Agreement reads:

"No overtime hours shall be worked except by direction of proper authority, except in cases of emergency where advance authority is not obtainable. In working overtime before or after assigned hours, employees regularly assigned to class of work for which overtime is primarily necessary shall be given preference."

The Interpretation to Rule 48 reads:

"In connection with this subject you brought up Rule 48 and I advised you that time worked on Sundays and holidays would be considered overtime and such overtime handled on basis provided for in Rule 48, this, of course, not to apply to positions necessary to the continuous operation of the Railway where regular rest day is assigned under Rule 50."

The Scope Rule of the Agreement does not describe the work incorporated within it. It merely sets forth the classes of positions to which it is applicable. The work actually included within its scope is determined by that work which is traditionally and customarily performed by the occupant of the positions described therein.

The positions occupied by Claimants are not named in the Scope Rule. We find no position therein described which traditionally and customarily performs the work involved in this claim exclusively. The record shows that train porters had performed the work for many years prior to the abolishment of their positions on September 19, 1948. In other words, the work did not belong exclusively to these Claimants by virtue of its being work traditionally and customarily performed by occupants of positions specifically described in the Scope Rule or by having been assigned by the Carrier as the exclusive work of clerks.

We are fully aware of the general rule that when work reserved exclusively to a craft is assigned to one of that craft six days per week, any such work to be performed on the seventh day belongs to that craft. But this is not such a case. The work in question is not that traditionally and customarily performed by the occupant of a position listed in the Scope Rule, nor is it work which has been assigned exclusively to clerks. The record shows, in fact, that train porters have performed this work for more than twenty-five years and the practice seems to have been established, without objection by the Clerks' Organization, that it was work that train porters could perform. We think the work is that which could properly be performed by clerks. What we here say is that it has not been exclusively reserved to them by the Scope Rule or by practice. Under such circumstances we cannot say that it belongs exclusively to the clerks without, in effect, writing a new agreement into the rules.

The rules cited by the Organization have no application to the situation shown in this case.

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 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.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 31st day of March, 1950.