Award No. 5751
Docket No. CL-5590

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Angus Munro, Referee

PARTIES TO DISPUTE:

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

ATLANTIC COAST LINE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes that the Carrier violated the Clerks' Agreement:

1. When it abolished one Adjustment Clerk position in Group 1 and six laborers' positions in Group 3 at Florence Transfer, S. C., on July 1, 1949, and transferred the work of transferring and adjusting bad order and overloaded cars out from under the scope and operation of the Clerks' Agreement, and

2. That the senior (unemployed), extra or furloughed Clerk who is listed upon the Class 1 Clerks' Seniority Roster, District No. 1, Florence Transfer and Freight Office, be compensated for wage loss sustained, less amount earned in other employment, if any for each day retroactive to July 1, 1949, the date the work was removed from the scope and operation of the Clerks' Agreement, and

3. That the six (6) senior (unemployed, extra, or unassigned) laborers listed upon the Class 3 Seniority Roster, District No. 1, Florence Transfer and Freight Office, be compensated for wage loss sustained, less amounts earned in other employment, if any, for each day retroactive to July 1, 1949, the date the work was removed from the scope and operation of the Clerks' Agreement.

4. That the Carrier be required to return such work, of adjusting bad order and overloaded cars at Florence Transfer, to the scope and operation of the current Agreement between the parties, by assigning such work in accordance with the rules thereof.

Note: The individuals entitled to receive payment of claims in each instance to be determined by a joint check of the seniority roster and payrolls.

EMPLOYES' STATEMENT OF FACTS: For more than thirty years, prior to July 1, 1949, there was maintained at Florence Transfer, S. C., a gang of employes covered by the Clerks' Agreement whose joint duties consisted of transferring and adjusting bad order and overloaded cars. These employes were carried on the Florence Transfer seniority rosters and worked under the general supervision of the Carrier's Transfer Agent.

tion because employes subject to its agreement were not called to transfer a carload of mail, it was stated, "We think the correct rule is that the Clerks' Agreement reserves all work usually and traditionally performed by the class of employes and all work in addition thereto which has been specifically reserved to them by the agreement and subsequent negotiations". Such is surely here the case. At no time during the many years of transferring and adjusting ladings at Florence was the work wholly performed by employes under the Clerks' Agreement. There is a history of this work having been performed by Mechanical Department employes since memory runneth not to the contrary. At no time has the type of work constituting the subject matter of this claim been usually and traditionally the exclusive work of employes under the Clerks' Agreement. As was stated by Referee Carter in Award 3003, "It cannot, therefore, be said that the work belongs exclusively to the Clerks". A similar set of circumstances was involved in Award 3004 to which was applied the principle announced in Award 3003.

The employes for whom this claim is entered are those located at the Merchandise Transfer, which is some distance from the shop where the work of transferring and adjusting ladings is accomplished. They hold no seniority as laborers or as clerks within the confines of the shop and for this reason also have no valid basis for making claim to this work which is performed not at the Transfer or on the Transportation Yard but at the shop. As was so aptly stated by Referee Robertson, in Award No. 4465, "Locale of performance of work in itself is not determinative of the right of classes of employes to its performance." The mere fact that some of this work has, in the years gone by, been performed at the Merchandise Transfer and in the Transportation Yard does not give to the Transfer employes any exclusive claim thereon because during those same years, a certain amount of the work was performed at the shop where it is now exclusively performed, in accordance with the cited Scope Rule of the Shop Laborers.

Clearly there has been no violation of the Scope Rule of the current Clerks' Agreement as there no longer remains on the Transportation Yard or at the Merchandise Transfer the work of transferring and adjusting bad order ladings or transferring ladings from bad order cars. This work has now been localized and is being performed exclusively in the shop and does not, therefore, fall within the definition contained in the current Scope Rule of the Clerks. To hold differently would be tantamount to awarding to the Employes a new rule which they have not at any time negotiated or attempted to negotiate, assigning to clerical employes the exclusive performance of transfer and adjustment of overloads and bad order cars, regardless of the location of such work. Your Board is, therefore, respectfully requested to deny this claim as it is without merit and not founded upon a violation of the current agreement, but, instead, founded upon wishful thinking as to the interpretation which the Organization would like to have placed upon the agreement.

The respondent Carrier reserves the right, if and when it is furnished with the ex parte petition filed by the petitioner in this case, which it has not seen, to make such further answer and defense as it may deem necessary and proper in relation to all allegations and claims as may have been advanced by the petitioner in such petition and which have not been answered in this, its initial answer.

Data in support of the Carrier's position have been presented to the Employe's representative.

(Exhibits not reproduced).

OPINION OF BOARD: This claim is advanced by the System Committee of the Brotherhood, hereinafter called Petitioner, for and on behalf of certain individuals referred to and described in part 1 of claim herein, hereinafter called Claimants. The claim is made against the Atlantic Coast Line, hereinafter called Carrier.

Petitioner averred Carrier, at the time and place set out in said claim, denied certain work to Claimants in violation of Schedule Rules 1, 2, 3, 4, 10, 18, 77, and 81. Carrier denied work Claimants had the exclusive right to protect was taken as alleged and, further, pleaded non joiner of parties in that employes within the I. B. of F. and O. and R. S L. Schedule and said Brotherhood were necessary parties herein.

Inasmuch as the special plea must first be disposed of our attention will be directed to it, see First Division Award 15220 (1952). Both sides herein make mention of and refer to those not here before us which, we think, is sufficient to put us on inquiry.

This is by no means the posing of a new and novel question before this Board. It has previously engaged our attention as well as the several other Divisions. The last view, at the time of this writing, of a majority of this Board is set forth in Award 5702, let on April 4th, 1952. Prior to such time we would style as a leading case is Award 5432, let on September 6th, 1951.

But before proceeding further on the subject of necessary parties we think the point raised by Petitioner that its Exhibit "B" makes notice not necessary be treated. We cannot find in said Exhibit the meaning given to it by Petitioner. We think it is nothing more than a recital of facts prevailing at the time such Exhibit was made with emphasis concerning a special feature of work which never had been claimed for Claimants.

Going back to Awards 5432 and 5702, we find both were let subsequent to Slocum vs. Lackawanna, 339 U.S. 239. That case held the jurisdiction of the Adjustment Board to adjust grievances and disputes is exclusive. That is the law of the land. It is also law to say the jurisdiction of a Division of the Adjustment Board extends only to the several crafts appearing in that portion of the Railway Labor Act, as amended, see Award 5702. We say it is law because it has been held a craft may not choose the form it desires when filing a dispute with the Adjustment Board but must file with the Division thereof possessing jurisdiction as set out in the aforesaid Act, see Second Division Awards 925 and 1527. It would then seem to follow a Division of the Board could not let a valid Award with reference to a craft over which it had no jurisdiction. With reference to a craft over which a Division does have jurisdiction Award 5702 discusses why it is not necessary to cite parties not originally made parties to the dispute.

Why then should we in this instance adopt the holding of the Board in Award 5432 rather than Award 5702? Both Awards were written by learned and eminent members of the legal fraternity. But to us in the light of what the Courts of our land have held in matters comparable to that before us and which decisions are cited in the former Award and in Second Division Award 1523 and especially in view of Missouri-Kansas-Texas R.R. Co. vs. Brotherhood of R. and S.S. C., 188 Fed. 2d 302 (1951) we are convinced the law sustains the Carrier. On such basis this referee is of the belief the law must be respected and followed else the Board would be doing a vain thing.

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

By reason of the above and foregoing this claim should be dismissed without prejudice thereby affording Petitioner the opportunity to take whatever action it may deem advisable in the future.

AWARD

Claim dismissed without prejudice.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. Ivan Tummon
Acting Secretary

Dated at Chicago, Illinois, this 1st day of May, 1952.

DISSENT TO AWARD NO. 5751, DOCKET CL-5590

We dissent.

/s/ J. H. Sylvester

/s/ G. Orndorff

/s/ A. J. Cunningham

/s/ Roger Sarchet

/s/ A. R. Ferris