# Award No. 7424
# Docket No. CL-7484

## NATIONAL RAILROAD ADJUSTMENT BOARD

## THIRD DIVISION

H. Raymond Cluster, Referee

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**PARTIES TO DISPUTE:**

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

**Gulf Coast Lines; International-Great Northern RR Co.; The St. Louis, Brownsville & Mexico Ry. Co.; The Beaumont, Sour Lake & Western Ry. Co.; San Antonio, Uvalde & Gulf RR. Co.; The Orange & Northwestern RR. Co.; Iberia, St. Mary & Eastern RR. Co.; San Benito & Rio Grande Valley Ry. Co.; New Orleans, Texas & Mexico Ry. Co.; New Iberia & Northern RR. Co.; San Antonio Southern Ry. Co.; Houston & Brazos Valley Ry. Co.; Houston North Shore Ry. Co.; Asherton & Gulf Ry. Co.; Rio Grande City Ry. Co.; Asphalt Belt Ry. Co.; Sugarland Ry. Co.**

**(Guy A. Thompson, Trustee)**

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood that—

(a) The Carrier is violating the Clerks' Agreement at Opelousas, La., by using persons not covered by the Clerks' Agreement to handle mail to and from Trains Nos. 9 and 10. Also

(b) Claim that the Carrier be required to assign the work in question to employes holding seniority rights and working under the Clerks' Agreement. And

(c) Claim that employes involved in or affected by the agreement violation be compensated for losses sustained.

**EMPLOYES' STATEMENT OF FACTS:** The normal station force at Opelousas is—

| POSITION | HOURS | DAYS PER WEEK |
|---|---|---|
| Agent | 8:00 A. M.—5:00 P. M. | 6 |
| Cashier | 8:00 A. M.—5:00 P. M. | 5 |
| General Clerk | 8:00 A. M.—5:00 P. M. | 5 |
| Porter # | 8:00 A. M.—5:00 P. M. | 5 |
| Telegrapher | 11:00 P. M.—7:00 A. M. | 7 |

# Called every Saturday and Sunday to handle mail to and from Trains Nos. 3 and 4.

night trains Nos. 9 and 10; (2) the work performed by the two trainmeeters here involved is confined exclusively to the handling of U. S. mail.

See also the following Awards: 71, 213, 1125, 1289, 1397, 1435, 2137, 2436, 3430, 3503, 3603, 3727, 4050, 4086, 4105, 4129, 4208, 4281, 4312.

In the light of the foregoing it is the position of Carrier that the claim here presented to your Board is without basis, merit or justification, and should accordingly be denied.

The substance of matters contained herein has been discussed in conference and/or correspondence between the parties.

(Exhibits not reproduced).

**OPINION OF BOARD:** The claim is that Carrier is violating the Agreement by using persons not covered by the Agreement to handle mail to and from Trains Nos. 9 and 10 at Opelousas, La., and asks that Carrier be required to assign the work in question to employes covered by the Agreement and to compensate all employes who have suffered loss by reason of the violation.

Trains Nos. 9 and 10 are passenger trains which operate between Houston, Texas and New Orleans, La. daily. Train No. 9 arrives at Opelousas at 2:05 A.M. and Train No. 10 arrives there at 2:55 A. M. Prior to January 27, 1944, mail was handled to and from these trains by the telegrapher who was assigned to work at the station 12 midnight to 8 A. M., seven days a week. As of that date, the mail on these trains had become too heavy for the telegrapher to handle alone, and a "trainmeeter" was employed to assist him. On September 1, 1948, an additional trainmeeter was employed. These two trainmeeters are used only to handle U. S. mail and are paid $30.00 per month. We accept the above statement of facts, submitted by Carrier, as true, despite evidence of a joint check in 1947 which failed to show anyone assigned to handle the mail on these trains. At any rate, it is undisputed that no employe covered by the Clerks' Agreement has ever handled the mail on these trains.

Since September 1, 1949, a Porter position covered by the Agreement has been assigned to Opelousas from 8 A. M. to 5 P. M., Monday through Friday. The incumbent of that position handles the mail to and from Trains Nos. 3 and 4, daylight passenger trains between Houston and New Orleans, and is given a call to handle the mail on these trains on Saturday and Sunday. In October, 1949, Claimant objected to the use of trainmeeters to work Trains 9 and 10. In December, 1949, Carrier informed Claimant that it was continuing to use them. No further objection was raised until the filing of the instant claim in October, 1953.

Claimant contends that the assignment of mail-handling to the Porter position at Opelousas clearly establishes that such work is included under Rule 1, the scope rule of the Agreement. Paragraph (b) of that Rule provides:

> "Positions referred to in this agreement belong to the employes covered thereby and no position shall be removed from this agreement except by agreement."

In addition to the scope rule, there is a Memorandum Agreement between the parties, dated November 1, 1940, which provides in part:

> "(a) It is recognized and agreed that all of the work referred to in Rule 1 of the Agreement dated November 1, 1940, between the Carrier and the Brotherhood belongs to and will be assigned to employes holding seniority rights and working under the Clerks' Agreement, except as provided below:

"(b) . . .

"(3) . . . it is agreed that where the work covered by the Clerks' Agreement is less that three hours on any shift of eight hours the Carrier may assign such work to station employes not covered by the Clerks' Agreement."

Claimant concedes that under Paragraph (b)(3) of the Memorandum, it was proper for the Carrier to assign the work of handling mail on Trains 9 and 10 to the telegrapher, since he was a station employe. However, it contended that trainmeeters are not station employes within the meaning of the Memorandum—they are private contractors. The work of handling mail is covered by the Clerks' Agreement, and Rule 1(b) and Paragraph (a) of the Memorandum prevent such work from being removed from the Agreement other than in accordance with paragraph (b)(3) of the Memorandum. The fact that Claimant permitted the mail to be handled by trainmeeters for four years after its initial objection has no effect upon the clear provisions of the Agreement that the work belongs to clerks.

Carrier contends that the work of handling mail on Trains 9 and 10 was never included under the scope rule of the Agreement since it has never at any time been done by clerks, but by long practice has been done by telegraphers or trainmeeters. The Carrier contends further that in any case, even if it were work belonging to clerks, Carrier has a right to have it done by trainmeeters, who are station employes under Paragraph (b)(3) of the Memorandum. Further, Carrier contends the work may be assigned to trainmeeters under paragraph (c) of the scope rule, which reads:

"This agreement shall not apply to individuals where amounts of less than thirty dollars ($30) per month are paid for special service 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."

In addition to the facts and contentions outlined above, there is a great deal of evidence and argument in the record as to the practice elsewhere on the Carrier with respect to the employment of trainmeeters, and there is generous citation of awards dealing with all aspects of the issue of the right of certain employes to certain work under scope rules. It is impossible to deal in this opinion with all of this material, but it has all been considered in reaching our conclusions.

Rule 1(c) can be eliminated from consideration since it deals specifically with payments of less than thirty dollars per month, and the trainmeeters are paid thirty dollars per month—not less than thirty. We feel also, in view of the discussion which follows, that Paragraph (b) (3) of the Memorandum is not determinative of the issue.

In essence, the determinative question is whether the particular work in question is comprehended in the scope rule. This rule does not refer in terms to handling mail or to the position of Porter; thus, under the well established principles of the Division, the decision as to whether that work is included within the rule depends upon the factual circumstance of whether the class or craft of employe claiming the work has customarily and traditionally performed it. There is no doubt that much of the mail handling on this Carrier has been traditionally and customarily performed by clerks, including such daytime work at the very station involved here. But the specific work claimed has never been done by clerks. From 1944 until 1953, it has been done by trainmeeters, and for at least the last four of those years, the Clerks' Organization was fully aware of this practice. During that period, in 1949, a new Agreement was negotiated, and no provision was included which would have the effect of denying or cancelling the practice. We are persuaded that on this state of facts, the handling of mail on Trains 9 and 10 was not and is not included within the scope rule of the Agreement. Awards 6421 and 5404 support this conclusion.

Much emphasis in argument was placed upon the presence of paragraph (b) of the scope rule as being a stronger provision than found in most scope rules, and a line of awards including 3563, 5785, 5790, 6141, 6357, 6444, 7047, 7048, 7129 and 7168 were cited showinng the effect which has been given to similar provisions by the Division. We have examined these awards carefully and have no quarrel with them. But in each of those cases, there was no question but that the specific work involved first had been performed by clerks and then was removed and assigned to some other craft; or else the work or position involved was found to be specifically set forth in the scope rule so that there was no ambiguity. There is a clear distinction here, where the work in question has never been performed by clerks. The effect of 1(b) is to prevent the removal of work already included under the Agreement, to a position outside of its coverage. In order for it to affect the situation, it is necessary to find first that the work has been covered by the Agreement, as in the cases cited. This we are unable to do on the facts of this case for the reasons above stated, and therefore this line of awards is not applicable here.

Since we have found that the particular work in question is not covered by the Agreement, it was no violation of the Agreement to employ trainmeeters to perform it.

The question of third-party notice, raised by Carrier, is disposed of in accordance with the Opinion in Award 7387.

**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 appproved 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. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 1st day of October, 1956.