Award No. 7784
Docket No. CL-7521

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward A. Lynch, Referee

PARTIES TO DISPUTE:

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

ERIE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that the Carrier violates and continues to violate the provisions of the Clerical Agreement between the parties when on January 1, 1954 and subsequent dates it requires and permits employes holding no rights under the scope and coverage of the Clerical Agreement at Marion, Ohio to perform the work of servicing heaters on cars traveling under Car Heater Service at Westbound Yard, Marion, Ohio, and

That the Carrier shall not compensate Employes Hartle, Newsome and any and all other employes adversely affected for all wage loss sustained by the Carrier's unilateral action when they assigned the work of servicing heater cars to employes of the Car Department at Marion, Ohio, employes not covered by the scope of the Clerical Agreement, retroactive to January 1, 1954 and for all subsequent dates until such violation complained of is corrected. (Claim 1054).

EMPLOYES' STATEMENT OF FACTS: Starting sometime prior to November, 1932, the work of servicing heater cars in the Westbound Yard at Marion, Ohio has been performed by Freight House Roster "B" forces under the scope and coverage of the Clerks' Agreement. The duties consist of refueling heaters, installing and removing heaters, extinguishing heaters, lighting heaters and marking records on Form 5720 as to the service performed. This was twenty-four hour service with a call after regular working hours, including rest days and holidays.

Effective January 1, 1954 the Carrier issued instructions to the effect that the work of servicing heaters in the Westbound Yard would thereafter be performed by Car Department employes, employes not covered by the Clerks' Agreement, and such employes were notified that they would perform the work that prior to January 1, 1954 had been performed by Roster "B" employes under the scope and coverage of the Clerks' Agreement, and who had performed this work at least since 1932.

In denying the Employes' claim, the Carrier makes reference to the fact that servicing heaters has not been performed exclusively by any craft or class of employes and refers to the work performed at other locations on the railroad. None of these locations are involved in the instant claim as

"This claim is inordinate, and the claim will be allowed for only the named claimants."

Interpretation No. 1 to Award 6101 put the question completely at rest. There the Board said:

"In regard to the interpretation requested, it is hereby interpreted that the claim was allowed for only the claimants specifically named in the claim filed with the Board, and it did not, and was not, intended to cover unnamed persons. This is specifically set out in the last paragraph of the opinion and in the award."

To the same effect is Erie Award 5116.

Thus, it is clear that the claim for unnamed persons is not properly before the Board and should be rejected in any conclusion.

The facts are clear that Car Department employes have for many years performed car heater service at most of the major points on Carrier's property. Also the facts are clear that it was not the intention of the parties to this dispute to change the practice. If a change in practice had been intended, it would have been a simple matter to spell it out in the Agreement. Therefore, when the Carrier saw fit to utilize its Car Department employes to perform car heater service in the westbound yard at Marion, Ohio, it was only exercising a right which it has preserved to itself. It will be remembered that employes of the City Products Company perform all of the car heater service in the eastbound yard at Marion, Ohio. Moreover, no complaint has been made with respect to Car Department employes performing car heater service at any of the other points hereinbefore mentioned.

In the final analysis, the work in question does not belong to any particular craft or class. It is a type of work that may be, and has been, performed by employes of the several crafts and by individuals not subject to any agreement.

From the facts herein set forth, together with the awards cited in support of similar facts and situations, it seems clear that a sustaining award in this dispute would give the Employes an exclusive right to work which they do not now have under the applicable Agreement. To sustain this claim would have the effect of writing a new rule. The Board has consistently recognized the fact that its power and authority is limited to interpretation of agreements as they have been made by the parties. Consequently, it is not authorized to read into a rule, that which is not contained, or by an award add or detract a meaning to the agreement which is clearly not the intention of the parties. Third Division Awards 529, 2029, 4439, 5864, 5971, 6365, and many others.

The Carrier has shown that under the applicable Agreement the Employes of Carrier's Car Department are performing no service in connection with car heaters that accrues exclusively to employes subject to the Clerks' Agreement; that the applicable Agreement was not violated, and that the claimants are not entitled to the compensation which they allegedly claim.

Therefore, the Carrier submits that the claim in this matter is without merit and it should be denied.

All data contained herein have been presented to the Petitioner involved in this dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: The material facts in this case are not in controversy. The Carrier admits that from 1932 to January 1, 1954 the work of servicing car heaters at Westbound Yard, Marion, Ohio, was per-

formed by Freight House Roster "B" employes. On that date the Carrier assigned these duties at the location in question to Car Department Employes, outside the Clerks' Agreement.

The Carrier maintains the work in question is not exclusively assigned to employes within the scope of the Clerical Agreement.

Organization asserts Carrier's action is violative of Rules 1, 3, 6 and 55 of the applicable Agreement.

Rule 1 is the Scope Rule and names the employe classifications covered by the Agreement. Such rule specifically mentions, inter alia, in Group 2 "station freight house" employes. Organization asserts Carrier violated this Rule by removing this work, which had been covered by Clerks' Agreement, and denying employes covered the right to perform it.

Rule 3 is the Seniority Datum Rule and Organization asserts, by its action of January 1, 1954, Carrier "thus denied employes the right to acquire seniority * * * and its attendant benefits."

Rule 6 governs Promotions and, Organization asserts, Carrier, by its January 1, 1954 action, "circumvented" it.

Rule 55 is the Effective Date and Changes Rule. Organization asserts if Carrier desired to remove work "* * * from the scope and operation of the Clerks' Agreement, it should have been handled in accordance with the Rule (55) instead of taking arbitrary action."

Carrier's defense is that Organization "cannot show" it ever "had the evclusive right to perform any part of the work involved in servicing car heaters;" that such service is, and has been performed by Car Department employes, Yardmasters, Clerical Employes both office and station, and Employes of independent companies at points such as Avoca, East Buffalo, Suspension Bridge, Meadville, Cleveland, Hammond, Chicago, Piers 19 and 48 in New York City and at Black Rock, New York.

Carrier further asserts that employes of "The City Products Company at Marion, Ohio perform all of this work required on eastbound cars moving through Marion Yard."

But, Organization's rejoiner is that "the only point in issue here is the westbound yard, Marion, Ohio, where as stated prior to January 1, 1954 this work was exclusively performed by employes covered by the Clerks' Agreement, Roster 'B' forces having performed this work even prior to the first agreement with the Organization at this location."

Manifestly, then, the servicing of car heaters on Carrier's system is, and has been performed by more than one class or group of employes.

Carrier submits many prior awards of this Division in support of its position, one of which (Award 7031—Carter) reads in part:

> "* * * Where work may properly be assigned to two or more crafts, an assignment to one does not have the effect of making it the exclusive work of that craft in the absence of a plain language indicating such an intent. Nor is the fact that work at one point is assigned to one craft for a long period of time of controlling importance when it appears that such work was assigned to different crafts at different points within the scope of the agreement. We conclude that the work here in question was not the exclusive work of Clerks on this Carrier. * * *"

Another cited by Carrier is Award 6022 (Parker) which reads in part:

> "There are two principles, so well established there is no occasion for citing Awards supporting them, that must be given consideration in determining the rights of parties under the confronting facts as we have construed them. The first is that except insofar as it has restricted itself by the Agreement the assignment of work necessary for its operations lies within the Carrier's discretion. * * *"

In support of its claim, Organization cites many awards which it believes supports its position. For example, Award 1314 (Wolf) and, Organization asserts, reaffirmed by Award 5790 (Wenke):

> "* * * 'positions' which are subject to the agreement (as Roster 'B' here) are protected to the craft by the agrement, and since 'work' is of the essence of a position such work which is the manifestation of the position and the identity of it is likewise protected to the craft. * * *"

Organization cites Rule 1 (b) of the applicable Agreement:

> "Should any position or positions (Organization construing 'position' to mean work) now covered by all the rules of this agreement be transferred to other departments or offices, or new positions be created taking over the duties of positions now covered by all the rules of this agreement, such transferred or new positions will continue under all the provisions of this agreement unless otherwise mutually agreed to between the Management and General Chairman or their representatives."

It also cites Award 5700 (Wenke):

> "It is a fundamental rule that work of a class covered by an Agreement belongs to those for whose benefit the contract was made. A delegation of such work to others not covered by the Agreement is in violation of the Agreement except as the parties, in their Agreement, may otherwise provide."

Another Award cited by Organization as supporting its claim in the instant case is 6284 (Wenke) which there sustained position of the petitioning Organization. However, in that Award this Division held that the work involved "is without doubt of a clerical nature."

While the parties in this dispute agree that the servicing of car heaters had been performed for many years at the Westbound Yard, Marion, Ohio by Freight House, Roster "B" employes, it cannot be said here that the work required in such servicing "is without doubt of a clerical nature."

Organization also cites Award 4445 (Wenke), same parties, same Agreement, as falling "four-square across the situation here involved."

However, in that case the Carrier abolished the positions of 15 watchmen and 7 gatemen—positions covered by the Clerks' Agreement—and at the same time, by bulletin, established 20 patrolmen's positions under Rule 6 of the Patrolmen's Union.

This Award, which sustained Organization's claim that the Scope Rule was violated, pointed out:

> "* * * While these new positions were assigned police authority, a duty excepted from the Clerks' Agreement, it is evident, although the evidence in regard thereto is not sufficient to determine the exact

amount thereof, that these new patrolmen, and others outside of the Clerks' Agreement, performed a very substantial part of the work which, prior to the positions being abolished, had been performed by the occupants thereof."

But in the instant case, no positions were abolished; the servicing of car heaters was only part of the duties of the Roster "B" employes and required only during the winter months. We, therefore, do not believe Award 4445 is applicable here.

This Division, in Award 7387 (Cluster) said:

"* * * In each case, the scope rule of the Agreement is relied upon to support the claim. This scope rule does not describe the work reserved to the class of employes covered by it. Under such rules, it has been said many times by the Board that the work reserved to the employes is that which has been traditionally and customarily performed by them. Thus, in each case it is incumbent upon the claimant to establish that the particular work he is claiming to be exclusively his under the Agreement, has traditionally and customarily been performed on the property involved by employes of the class or craft to which he belongs. This is a question of fact, and it can only be answered on the basis of the evidence presented in each case."

In summary, then, we must conclude that despite the acknowledged fact that car heater service was performed at Westbound Yard, Marion, Ohio by Roster "B" employes for 22 years,

(1) this work is not assigned to them by specific reference in the Agreement;

(2) Organization has failed to prove that this work belongs to its members to the exclusion of all other classes or crafts on Carrier's system;

(3) there is no definite knowledge or proof that claimants have "lost", have been "injured";

(4) the Agreement here applicable is not a sectional, but is a system-wide agreement; and

(5) the evidence of record would indicate that a prior Award of this Division, 7031 (Carter) covers the issue here before us:

"* * * Where work may properly be assigned to two or more crafts, an assignment to one does not have the effect of making it the exclusive work of that craft in the absence of a plain language indicating such an intent. Nor is the fact that work at one point is assigned to one craft for a long period of time of controlling importance when it appears that such work was assigned to different crafts at different points within the scope of the agreement. We conclude that the work here in question was not the exclusive work of Clerks on this Carrier. * * *"

A denial Award, is therefore, indicated.

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

That the parties to this dispute 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 the Agreement has not been violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois this 13th day of March, 1957.