

Award No. 9836
Docket No. CL-8984

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Raymond E. LaDriere, Referee

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

THE WESTERN PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: This is a claim of the System Committee of the Brotherhood that:

(a) The Carrier has violated and continues to violate the rules of the Clerks' Agreement by its failure and refusal to assign the janitorial and messenger work at the Stockton Roundhouse to employees within the scope of the Clerks' Agreement.

(b) Mr. Obenshain, his relief, and/or their successors to the position of Roundhouse Clerk at Stockton, be compensated for a minimum call of three hours at the pro rata rate for each day of the violation beginning August 16, 1954, and continuing until the violation is corrected, in addition to compensation already received for service on such days.

EMPLOYEES' STATEMENT OF FACTS: On October 15, 1954, Relief Roundhouse Clerk W. L. Obenshain submitted claim to Roundhouse Foreman Mr. H. J. Kelly account violation of the scope rule of the Clerks' Agreement through the following letter:

"Stockton, California
October 15, 1954

"Mr. H. J. Kelly
R. H. Foreman

Subject: Scope Rule 1—of agreement between the Western Pacific RR Co. and the Brotherhood of Railway Clerks

It is my contention that work provided for in the Clerks' Schedule is being performed at Stockton Roundhouse by members of the Laborers' Craft.

This work consists of Janitor Work in the Roundhouse Office and Messenger Service to the extent of carrying messages and mail to and from the Yard Office.

performed by and which is expressly included in the Agreement of the Firemen and Oilers' craft; that clerical employes have never performed all janitor work on this property nor acquired exclusive rights to the performance of such work; and that in addition to the Firemen and Oilers' craft, members of the Telegrapher's craft and the Maintenance of Way craft have also historically performed janitor work on this property. In view of these facts, Carrier emphatically asserts that the instant claim is wholly without merit and urges that it be denied in its entirety.

(Exhibits not reproduced.)

OPINION OF BOARD: This claim is based on failure of the Carrier to assign janitorial and messenger work at Stockton Roundhouse to employes within the scope of the Clerks' Agreement.

Carrier contends and the record shows that for over forty years the work of keeping shop and roundhouse offices and outside areas clean, and delivering messages between the roundhouse and other offices, has been assigned and performed by laborers who are covered by agreement between the Western Pacific Railroad Company and the International Brotherhood of Firemen, Oilers, Helpers, Roundhouse and Railway Shop Laborers.

A similar factual situation was covered by Award 5404 (Parker), and this Board there held that the record did not disclose that the Agreement was violated and the claim was denied.

In Award 4248 (Carter), this Board used language which applies with particular force to the matter before us:

"Whatever the proper allocation of this work might have been in the first instance if we had been called upon to determine that question, the Carrier placed it under the Maintenance of Way Agreement. For many years the work was performed by Maintenance of Way employes. The foremen who supervised the work held positions bulletined under the Maintenance of Way Agreement. Employes doing this work were building up seniority under the Maintenance of Way Agreement. Without question, the work belonged to employes under the latter agreement. As such, it could not be taken from them except by negotiation. This was not done * * *."

The record does not disclose violation of the Agreement by Carrier.

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;

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 was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 17th day of February, 1961.