

Award No. 10633

Docket No. CL-9842

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Jerome A. Levinson, Referee

PARTIES TO DISPUTE:

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

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood:

(1) That Carrier violated, and continues to violate, the Clerks' current Agreement in the Car Department, Pine Bluff, Arkansas, when using employes not covered by the Agreement for performing work on a position fully covered by the rules of the Agreement.

(2) That Mr. Joe W. Crow, and/or his successor, be paid for eight hours time for each Sunday, and paid for a minimum call of two hours time for each Saturday at time and one-half rate, beginning with Sunday, January 8, 1956, and continuing until the violation is corrected, and that a joint check be made to determine claimant entitled to be compensated, and the amount due.

EMPLOYEES' STATEMENT OF FACTS: Mr. Joe W. Crow is regularly assigned to the position of Office Porter, Car Department, Pine Bluff, Arkansas, 8:00 A. M., to 5:00 P. M., Monday through Friday, Saturday and Sunday rest days. The duties, according to Superintendent Motive Power Bulletin No. 26, January 18, 1956, are:

"The duties of this position will require the performance of Porter's work in Office of General Car Foreman and also all Messenger work as may be required in Car Department." (Emphasis ours.)

On Sundays, January 8, and February 5, 1956, Coach Cleaners were instructed and required to sweep, clean, dust and wax the floors and furniture in the Car Department Office, which is the assigned work and duties of the Office Porter position to which Claimant is regularly assigned, however, he was denied the work.

Also, on Saturdays and Sundays, a laborer of the Car Department is required to perform Messenger work in carrying messages, etc., to and from Car Department Office, Yard Office and Telegraph Office, which work is a part of the regularly assigned duties of Claimant's position.

Award 7364 (Referee Rader) denied claim of a clerk that agreement was violated when he was not called to seal cars after assigned hours and on rest days, instead of a conductor doing such work. The Opinion included the following:

**** evidence presented therein leads to the conclusion that over the years the work has not been performed or considered exclusively that of clerks.

"The reverse seems to have been the accepted practice and we are of the opinion that the rules of the Agreement did not intend that the work would be considered exclusively the work of clerks under the fact situation here presented."

Award 7081 (Referee Whiting) denied claim of a clerk account mechanics securing oil and parts themselves when the clerk was not present to issue material. The Opinion, in full was:

"It appears that on Saturdays, Sundays and holidays subsequent to January 1, 1952 Mechanical Department employees helped themselves to oil and parts needed in their repair work but it does not appear that anyone performed the functions or duties of the Material Distributor on those days, so the claim is without merit."

Award 5391 (Referee Elson) and **Award 5397** (Referee Donaldson) are similar.

Award 7385 (Referee Rader) cited in connection with the other portion of the present claim is also in point here. It held that cleaning of buildings was not exclusively the work of clerks, citing long standing practice in that case.

Award 6644 (Referee Bakke) denied claim of Agent that he should be called on Saturday, Sunday and holidays to tend the fire in heater at the station, instead of a taxi driver placing coal on the fire.

As pointed out above, there was no need for a porter in the present case. The services for which the porter was employed were not required on Saturday and Sunday. The porter did not have a monopoly on carrying mail or messages on other days, and the Carrier respectfully submits that he had no basis on which to claim such a monopoly on Saturday and Sunday.

Without prejudice to its position that the claim is entirely without merit, the Carrier submits that under no condition could the claim for 8 hours at penalty rate on Sunday be valid. The Board has held in many awards that the rate for work not performed but to which entitled, is the pro rata rate. Please see **Award 7288** (Referee Carter), **Award 7242** (Referee Larkin) and similar awards.

The Carrier repeats that the claim is not supported by the rules and respectfully requests that it be denied.

All data herein has been presented to representatives of the Employees.

OPINION OF BOARD: In 1954 Petitioner filed time claims alleging the services of two Car Department laborers were being used full time to perform janitorial work (cleaning up Car Department and certain other offices) and messenger work (making regular trips with mail, carrying

messages and Speed Recorder Tapes, and remaining available for errand service), all work assertedly reserved to employees covered by the Scope Rule of the Clerks' Agreement. Carrier thereupon arranged to have clerical employees assigned to this work Monday through Friday, and Petitioner withdrew its claims. Bulletins were issued for two positions, one covering position of Office Porter, Car Department, to which Claimant was regularly assigned, with duties stated as follows:

"The duties of this position will require the performance of Porter's work in Office of General Car Foreman and also all messenger work as may be required in Car Department."

Identical duties were stated in bulletin issued January 18, 1956, covering Claimant's position.

Petitioner asserted that on Sundays commencing January 8, 1956, Coach Cleaners were used to sweep, clean, dust and wax the floors and furniture in the Car Department Office, also that on Saturdays and Sundays a laborer of the Car Department performed messenger service by carrying messages to and from Car Department Office, Yard Office and Telegraph Office, all thereof work regularly assigned to Claimant. This, Petitioner claimed, violated the Scope Rule 1 and Rule 32-8 of the Agreement between the parties effective April 1, 1946, in pertinent part as follows:

"1-1. These rules shall govern hours of service and working conditions of all the following classes of employees. . . :

"Group 1. Clerks.

"Group 2. Other office, station and storehouse employees such as:

"Office boys, messengers, waybill filers and assorters;

"Office and station porters, janitors, charwomen, cleaners and maintainers."

"32.8 —

"Work on Unassigned Days. Where work is required by the Carrier to be performed on a day which is not a part of any assignment, it may be performed by an available extra or unassigned employee who will otherwise not have 40 hours of work that week; in all other cases by the regular employee."

In response to the first portion of the claim, Carrier first advised Petitioner on March 15, 1956 that "use of coach cleaner to perform work by cleaning Car Foreman's office on Saturday and Sunday has been discontinued since receipt of your letter". Then, on appeal Carrier wrote on July 5, 1956 that the General Car Foreman had had Coach Cleaners working on Saturday and Sunday to scrub and wax the floor in his office each month since January 1953 for convenience, and that upon receipt of Petitioner's claim arrangements were made to have this work performed by the Office Porter during regular hours and Coach Cleaners had not performed this work since February 5, 1956.

(To Petitioner this constituted a recognition by Carrier that the work in dispute belonged to Clerks). Carrier further asserted that the Porter performed daily sweeping, cleaning and dusting of the office, as distinguished from periodic scrubbing of floor and renewing of wax which, it stated, the Porter did not perform.

As to the second portion of the claim, Carrier first asserted that "the small amount of messenger work required on Saturday and Sunday does not justify the use of an extra employe or use of the regularly assigned Porter on a call basis". On appeal, Carrier stated it believed the messenger work involved was not reserved exclusively to the Clerks, that prior to the 40-Hour Week it had been performed by laborers on Sunday and other days when messenger was not employed, and subsequently it also had been performed by laborers on Saturdays. The laborer was not used in this connection after July 20, 1956. (Here again, Petitioner construed this as recognition that the work belonged to Clerks). In its Ex Parte Submission to the Board, Carrier explained that there was no office work in the General Car Foreman's Office on Saturdays and Sundays; one rip track foreman was present in and out of the office, supervising repairs to freight cars; Porter's messenger service was not required — there was nothing to be distributed in the various locations; the rip track foreman himself went to the telegraph office and yard offices just prior to noon to look over messages or "bad orders", etc., on hand, so that the force could be lined up for the afternoon, or sent a laborer over to pick up whatever messages were on hand; and about 3:15 in the afternoon he sent a switch list to the yard office by the laborer if he was not going that way himself shortly. Carrier asserted this method of handling had been in effect for years, as a convenience only to the foreman (but not a necessary one), without any contention that it was improper. Carrier asserted the Porter made regular rounds, but had no monopoly on carrying mail or messages, at least the casual running of errands or carrying of papers from place to place which, it stated, laborers always and done both during and outside the assigned hours of the Porter.

The Scope Rule does not specifically vest office cleaning in Porters or Janitors, and the 1954 bulletin refers to "Porter's work in Office of General Car Foreman", in general terms. However, the claim lists "sweep, clean, dust and wax the floors and furniture". Nothing in the record would justify an exclusion of any of these janitorial-type items from the Porter's work, as recognized by Carrier to be his functions at least since 1954 (Award 7132), other than Carrier's assertion on appeal that scrubbing and waxing the floor had been performed periodically by Coach Cleaners since 1953 and had not been performed by the Porter. Carrier did not effectually deny performance by Coach Cleaners of the other listed items, except work on furniture, and its first response to the claim was advice that the use of Coach Cleaner to perform work "by cleaning" had been discontinued. Under these circumstances, the Board believes the record indicates that on Sundays Coach Cleaners performed substantial work belonging to Claimant (in the absence of the use of regularly assigned relief, extra or unassigned employe entitled to perform it).

With respect to the second portion of the claim, here too the Scope Rule does not specifically define "messengers". However, the 1954 bulletin covers "all messenger work as may be required in Car Department." This would seem to include all required bearing of messages and running of errands work peculiar and "indigenous" to messengers. Award 385. However, even if messenger work is confined, in the manner urged by Carrier, to the regular, routine carrying of mail and messages, the functions delegated to the laborer on Saturday and Sunday equally were performed at regular times, just before

noon and at about 3:15 P.M., and between regular places, rather than as casual, irregular running of errands. It does not seem appropriate to determine the matter on the basis of triviality. Award 7022.

The Board therefore concludes that the claim should be allowed, with payment to Claimant and/or his successor (or such claimant as shall be determined by a joint check) for eight hours time for Sundays commencing January 8 and ending February 5, 1956, and for a minimum call for two hours for each Saturday subsequent to January 8 and prior to July 21, 1956, all at the rate of time and one-half, this representing the rate Claimant would have received if he had performed the work. Award 9436.

Notice of pendency of this dispute and time for hearing was given to the Brotherhood of Railway Carmen of America. The latter informed the Secretary of this Division that it did not desire to appear or file any documents in the matter.

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

That Carrier violated the Agreement.

AWARD

Claim sustained as set forth in Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 31st day of May 1962.