

Award No. 11062

Docket No. CL-10466

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Preston J. Moore, Referee

PARTIES TO DISPUTE:

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

TEXARKANA UNION STATION TRUST

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

(1) That Carrier violated the Clerks' current Agreement at Texarkana Union Station on October 25 1956, when it employed Mr. H. H. Hake as Assistant Custodian without regard to the seniority rights of certain employees.

(2) That Mr. C. D. Hicks and Mr. George Baker, Jr., and any and all other Janitor-Red Caps who may be adversely affected, be compensated for a day's pay at \$13.22 a day, for each day worked by Mr. H. H. Hake, beginning with October 25, 1956, and continuing until the violation is corrected.

EMPLOYEES' STATEMENT OF FACTS: On October 25, 1956, Carrier employed Mr. H. H. Hake to fill the position known as Assistant Custodian, working Monday through Friday, 7:00 P. M., to 4:00 A. M., rate \$13.22 a day. He is relieved on Saturdays and Sundays by Messrs. Hicks and Baker, who are extra Janitor-Red Caps. George Baker, Jr., is carried on the Janitor-Red Caps Seniority Roster with a seniority date of May 22, 1952, and C. D. Hicks has a seniority date of April 9, 1953. George Baker, Jr., and C. D. Hicks worked the position of Assistant Custodian from November 20, 1955, to May 21, 1956, of which latter date the position was abolished.

On February 21, 1956, Local Chairman W. H. Austin requested Mr. G. A. Alford to bulletin the position of Assistant Custodian which had been unilaterally established as an excepted position in November, 1955. On February 23, 1956, Mr. Alford advised Mr. Austin that the position in question did not come under our Agreement.

It is our information the duties performed by the Assistant Custodian have in the past been performed by Porters (now classified as Janitors-Red Caps). The Custodian supervises the work performed by the Assistant Cus-

likewise are those of unnamed employees which are not "covered by time reports presented by or on behalf of the individual employe or employees involved in the usual way to the proper officer of the Carrier within sixty (60) days from the date of the occurrence on which the claim is based."

"In Award No. 182 of Special Board of Adjustment No. 90, BRT v. Union Pacific, Referee Yeager, it is said:

"The claim is invalid for another reason. The claim is not made on behalf of any individual. The agreement requires that a claim must be made on behalf of an employe. This means of course on behalf of some particular employe."

"We agree with the findings, conclusions and interpretations made by the foregoing authorities as applied to the questions confronting us. We hold, therefore, that where the contract provides that claims must be presented 'by or on behalf of the employe involved', a claim filed on behalf of an unnamed individual is so lacking in specificity as to be barred by contract."

For the reasons stated above, the Carrier respectfully requests the Board to deny the claims in all respects.

All known relevant argumentative facts and documentary evidence are included herein. All data in support of Carrier's position has been presented to the employees or duly authorized representatives thereof and made a part of the particular question in dispute.

(Exhibits not reproduced).

OPINION OF BOARD: This is a dispute between the Grand Lodge Brotherhood of Railway and Steamship Clerks and the Texarkana Union Station Trust.

Messrs. Baker and Hicks worked the position of Assistant custodian from November 20, 1955 to May 21, 1956 when the position was abolished.

On October 25, 1956 Carrier employed Mr. Hake to fill the position known as Assistant Custodian, working Monday through Friday, 7:00 P. M. to 4:00 A. M., rate \$13.22 a day. He is relieved on Saturdays and Sundays by Messrs. Hicks and Baker who are extra janitor redcaps.

Petitioner now contends that Claimants Hicks and Baker were entitled to the work and should be compensated therefor. The Carrier contends that this position is not covered by the Agreement. The Scope Rule is as follows:

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

- "Group (1) Clerks: (a) Clerical workers
- (b) Machine Operators

"Group (2) Other office and station employees, such as mail and baggage handlers, office boys, messengers, train announcers, gatemen, baggage and parcel room employees,

office, station and mail room watchmen, janitors and others similarly employed.

"This agreement shall not apply to the following positions: Ticket Agent, Mail Foreman, Custodian.

"These rules shall not apply to individuals where amounts of less than Thirty Dollars (\$30.00) per month are paid for special service which takes only a portion of their time from outside employment or other business, or to individuals performing personal service not a part of the duty of the Company."

In 1950 Carrier established a new position entitled "Assistant Custodian". In 1955, the Carrier established a second position of Assistant Custodian. This second position is the one involved in this dispute.

The issue in this case concerns whether or not the duties of the position come under the scope of the Agreement. There is sufficient evidence in the record to find that this position, from the hours of 7:00 P. M. to 4:00 A. M. is nothing more than janitor work, and consequently comes within the scope agreement of the Organization. On this question we cite Award 7374 wherein it was held that the duties of the position were controlling.

For the foregoing reasons we find the Agreement was violated. The claimants were entitled to the work and should be remunerated for each and every day that the position was filled by one other than a member of their craft.

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 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 violated.

AWARD

Part 1, sustained. Part 2, sustained as set forth above.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 24th day of January, 1963.