

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 EMPLOYEES**

**NEW YORK CENTRAL RAILROAD
(EASTERN DISTRICT, BOSTON & ALBANY DIVISION)**

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

(1) That the Carrier violated the rules of the current Clerks' Agreement when effective with the close of business March 6, 1958, it abolished the position of Demurrage Clerk, Adams, Mass., held by Mrs. M. J. Glazebrook, with assigned hours 8:00 A.M. - 5:00 P.M., Mon. through Fri., days of rest Sat. and Sun., rate of pay of \$16.807 per day and reassigned the work of the abolished position in part to the two remaining Clerks and in part to the Agent, an employee not covered by the scope of the Clerks' Agreement, and

(2) That effective March 7, 1958, the senior qualified clerk (Mr. R. Boynton) shall be additionally compensated 4 hrs. pay at the pro rata rate of \$16.807 per day (plus subsequent adjustments of a general character) and this claim to continue in effect until such time as the rules of the agreement have been complied with, and that

(3) Carrier shall be required to immediately return this work to the scope of the Clerks' Agreement, and further

(4) That should Mr. Boynton be succeeded, said successor shall then become claimant under item (2) above.

EMPLOYEES' STATEMENT OF FACTS: Under date of March 3, 1958, Agent H. B. Foley, Adams, Mass., issued notice to Mrs. M. J. Glazebrook that effective with the close of business, Thursday, March 6, 1958, her position of Demurrage Clerk was abolished. (See Employees' Exhibit "A" attached.)

Prior to the abolishment of the Demurrage Clerk position, there were 3 clerical positions in effect at Adams, Mass. Freight House, 5 days per week, Mon. through Fri., 8:00 A.M. - 5:00 P.M., Sat. and Sun. as days of rest held by Mr. R. B. Boynton, Mrs. M. J. Glazebrook and Mr. L. P. Macksey.

Carrier requests that if the claim is not dismissed or remanded for lack of jurisdiction, it be denied in its entirety for lack of merit or agreement support.

All data and arguments contained herein have been presented to the Clerks' Organization in conference and/or in correspondence.

(Exhibits not reproduced.)

OPINION OF BOARD: On March 3, 1958, the position of Demurrage Clerk was abolished. The duties of the position were reassigned to the two remaining Clerks and the Agent. The Petitioner contends that the portion of work assigned to the Agent violated the Scope Rule.

"RULE 1 — SCOPE

"(a) These rules shall constitute an agreement between the NEW YORK CENTRAL RAILROAD (Eastern District, Boston & Albany Division) and its employes as represented by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees and shall govern the hours of service, working conditions and rates of pay of all employes engaged in the work of the craft or class of clerical, office, station and storehouse employes.

"For the purpose of this agreement, the craft or class of clerical, office, station and storehouse employes is divided into the following groups:

* * * * *

"Positions or work within the scope of this agreement belong to the employes covered thereby and shall not be removed therefrom without negotiation and agreement between the parties signatory thereto."

It is well settled by this Board that, when the Scope Rule is defined in positions and not work, its coverage is determined by custom and practice. Therefore, the burden of proof of establishing the past practice is upon the Petitioner. There is insufficient evidence in the record to establish the fact that the work performed by the Agent belonged to the Organization by practice and custom. At the time of the abolishment of the position it was performed by Clerks, but it appears that it had previously been performed by others.

The Petitioner has failed to offer any proof that by practice and custom the work belonged to them.

For the foregoing reasons, we find the Agreement was not violated.

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 Employees involved in this dispute are respectively Carrier and Employees 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 11th day of June 1963.

LABOR MEMBER'S DISSENT TO AWARD 11495
(Docket CL-11071)

The "Opinion of Board" reads in part as follows:

"It is well settled by this Board that, when the Scope Rule is defined in positions and not work, its coverage is determined by custom and practice. Therefore the burden of proof of establishing the past practice is upon the Petitioner. There is insufficient evidence in the record to establish the fact that the work performed by the Agent belonged to the Organization by practice and custom. At the time of the abolishment of the position it was performed by Clerks, but it appears that it had previously been performed by others.

The Petitioner has failed to offer any proof that by practice and custom the work belonged to them."

In the oral panel discussion the Carrier Member contended that the work in question was keeping demurrage records, and that the Employes had failed to prove that Clerks performed this work at Adams, Massachusetts.

The Referee's particular attention was directed to conclusive evidence in Employes' Exhibit "A" appearing on record page 9, which reads as follows:

"NEW YORK CENTRAL SYSTEM

ADAMS, MASS.

MARCH 3, 1958

MRS. M. J. GLAZEBROOK
147 BELLEVUE AVENUE
ADAMS, MASS.

THIS TO NOTIFY YOU THAT THE POSITION OF "DEMUR-
RAGE CLERK" AT ADAMS, MASS. IS ABOLISHED EFFEC-
TIVE THURSDAY, MARCH 6, 1958, AT CLOSE OF BUSINESS.

UNDER RULE 42 OF YOUR AGREEMENT (RETURNING FROM LEAVE OF ABSENCE) YOU HAVE SEVEN CALENDAR DAYS IN WHICH TO EXERCISE SENIORITY RIGHTS.

H. B. FOLEY, AGENT

CC MR. LTG
MR. WMP"

The preponderating duties of a position have always been the basis for its title. For example, Yard Clerks spend the majority of time performing duties pertaining to yard work and records, a Rate Clerk's duties mainly consist of rate matters, and the duties of a Cashier mainly consist of maintaining financial records, etc. Thus, the title in the instant dispute has significance and, as heretofore pointed out, during oral panel discussion the Carrier Member contended that the work involved was that of keeping demurrage records.

The Referee failed to acknowledge all the evidence of record in support of the Employees' contention that the demurrage work at Adams, Massachusetts has always been performed by employees within the Scope of the Clerks' Agreement.

It is quite evident the Referee erred; and for the above reasons, I dissent.

C. E. Kief

Labor Member

June 28, 1963