

Award No. 11674

Docket No. CL-11581

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Jim A. Rinehart, Referee

PARTIES TO DISPUTE:

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

THE CENTRAL RAILROAD COMPANY OF NEW JERSEY

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

(a) Carrier violated 1(g), 44(b) and related rules of the Clerks' Agreement, at Metropolitan Freight Station, commencing August 18, 1958, when they unilaterally transferred work assigned to a scope position to non-scope employees, and

(b) Carrier be required to compensate Miss G. Golia three (3) hours pay for August 18, 19, 20, 21, 22, 25, 26, 27, 28 and 29, 1958 each, and

(c) Carrier be required to compensate Mr. V. Pilato and/or his successors three (3) hours pay commencing September 1, 1958 until violation is corrected.

EMPLOYEES' STATEMENT OF FACTS: A portion of the duties of Job No. 1040, Clerk, are as follows: "Phone patrons delinquent in freight payments." This assigned duty was transferred from scope position No. 1027 when that position was abolished on November 18, 1957.

Effective August 18, 1958, the Carrier transferred this item of work from scope to non-scope employees.

POSITION OF EMPLOYEES: There is in evidence an agreement between the parties from which the following rules are quoted, in whole or in part, for ready reference:

RULE NO. 1 — SCOPE

(a) These rules shall constitute an agreement between the Central Railroad Company of New Jersey, The New York and Long Branch Railroad Company; Wharton and Northern Railroad Company and 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 Employees in the

has been accomplished by clerks. The need for personal collections of the nature involved in this claim has been limited to Sears Roebuck, and the procedure for collection there was worked out over a period of time to meet the special circumstances which arose at that store. Under the circumstances of this case, we cannot hold that the assignment to a clerk of the collection of bills at Sears Roebuck supports the conclusion that only clerks could be used to make the collection in this case. We do not think it has been established by this record that the work in question is covered by the Clerks' Agreement to the exclusion of the Agent. Therefore, we find no violation of the Agreement." (Emphasis ours.)

In Award No. 7031, it was stated:

" * * * 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. * * * "

It is, therefore, the Carrier's position in this dispute that:

1. The practice has been for agents to make collections of this kind and the work is not exclusively the right of clerks because they have not traditionally and customarily performed it exclusively;
2. That the work being performed by the agents has been performed by them since the inception of the industry, and that work which has flowed out from an agent may ebb back to him to the limit of capacity of the incumbent of the position;
3. Even if the agent's action is held to be a violation of the agreement, payment of the claim is not required because claimants were not "injured"; and respectfully requests that this claim be denied in its entirety.

The Carrier affirmatively states that all data contained herein has been presented to the Employees' representatives.

OPINION OF BOARD: This is a Scope Rule dispute and involves the following rules of the effective Agreement.

"RULE 9

"(a) Abolishing Positions —

* * * * *

"(4) When a position covered by this agreement is abolished, the work previously assigned to such position which remains to be performed will be assigned in accordance with the following:

"(a) To another position or other positions covered by this agreement when such position or other positions remain

in existence at the location where the work of the abolished position is to be performed.

"(b) In the event no such position under this agreement exists at the location where the work of the abolished position or positions is to be performed, then it may be performed by an Agent, Yardmaster, Foreman or other supervisory employe, provided that less than four (4) hours' work per day of the abolished position or positions remains to be performed; and further provided, that such work is incident to the duties of an Agent, Yardmaster, Foreman, or other supervisory employe."

The rules further provide for exceptions, and we are concerned here only with the following:

"RULE 1

"Exceptions:

* * * * *

"(g) Positions or work within the scope of this Agreement belong to the Employes covered herein as provided for in these rules and nothing in this Agreement shall be construed to permit assigning this work to other than Employes covered by and as provided for in these rules or prevent the application of these rules to such positions or work except as provided for in Rule 9 (g) (2) or by mutual agreement between the Management and the General Chairman."

The Agreement thus provides how the remaining work shall be assigned when the position is abolished.

Under these rules, by Agreement between management and the Organization, on May 8, 1957, detailed duties on work items were permanently assigned to individual clerical positions at Metropolitan Freight Station at Elizabethport, New Jersey. The duties assigned to position No. 1027, clerk-typist included, "Handling correspondence, phoning delinquent patrons." The position No. 1027 was abolished November 18, 1957 under the Rules 9 (a), 4 (a), and the remaining work was assigned to three other scope positions, one being No. 1040 in the same station at Elizabethport, New Jersey. Thereafter, two letters were written by Carrier, to the Organization's Chairman, confirming that phoning of delinquent patrons came under the scope of the Clerks' Agreement.

Thereafter and on August 12, 1958, Carrier met with District Chairman and explained the financial condition of the Carrier, asking that the local agents in some 5 stations be, by specific agreement, authorized to phone delinquent patrons, with the understanding that it would not be a permanent arrangement. A list of delinquent patrons was agreed upon. Elizabethport, New Jersey, was not one of the stations coming under this special Agreement.

On August 18, 1958, the Carrier unilaterally instructed the incumbent of position No. 1040 to desist making any more phone calls to delinquent patrons and instructed the office manager of the station to perform that duty. There were other scope positions still existing at the location.

The office manager was a non-scope employe.

This Board has consistently held that a Carrier may not arbitrarily take work from under the scope of an Agreement. Such would destroy the Agreement. See the early Award No. 751 (Swacker). Also Awards No. 753 (Swacker), 7287 (Rader), 5560 (Carter), 5541 (Carter), 4664 (Connell), 3826 (Swain), 3870 (Douglas), 10626 (Levinson).

Notwithstanding the Carrier's contention that some of the work involved has at one time been performed by local agents, the fact remains that when the detailed duties on work items were permanently assigned on May 8, 1957, the phoning of delinquent patrons was assigned to clerical positions. Thus that work automatically became subject to the Agreement and as long as the work subsisted, it could be removed therefrom only by agreement of the parties. Such was the Agreement of August 12, 1958 by which 5 stations were excepted from the Agreement. That in itself recognized the work belonged to the clerical positions.

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 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 Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 5th day of August 1963.

CARRIER MEMBERS' DISSENT TO AWARD 11674, DOCKET CL-11581

The error committed by the Majority here is not unlike that committed by the precedent awards cited in the "Opinion" where it is assumed that when certain duties are assigned to a clerical position, they belong exclusively to that craft. This assumption forms the false premise from which their equally erroneous conclusion flows.

The Petitioner was required to prove that the specific work of "phoning delinquent patrons"—which admittedly had been done previously by agents—or clerks working under their supervision at the Local Agencies—was assigned exclusively to clerks at the Metropolitan Freight Station and the parties intended it should be so assigned. The Majority tragically fails to understand that we are interpreting a contract and in the process are searching for the manifested intent of the parties. The facts of this case clearly dis-

prove the Majority's conclusion that the work of "phoning delinquent accounts" was assigned exclusively to clerks. In the first place, only the work of seven agencies was assigned to the Metropolitan Freight Station. Other Agencies remained the same, and the same identical work was performed at those Agencies by Agents. Thus, there was no system-wide practice from which the Majority could glean the manifested intent. Secondly, even when this work was assigned to a clerical position at the consolidated point, it was continuously performed by the Office Manager (non-Scope employe) where there was "an unusually bad condition." This certainly does not indicate an exclusive assignment. On the contrary, it establishes the truth of Carrier's contentions in the record that the disputed work was not intended to be assigned exclusively under the Clerks' Agreement. Finally, the Organization makes this unequivocal assertion: "it is our understanding that the clerk will make two contacts to a delinquent patron before a non-scope employe handles the delinquent item." Conceding the Organization's statement from its strongest posture, that such an understanding did exist, we can fairly conclude the work of contacting delinquent patrons, whether on the first contact or third, was not intended to be assigned exclusively to clerks. The Majority did not carefully review the evidence presented; otherwise, they would not have reached their erroneous conclusions.

For the reasons stated above, we dissent.

W. F. Euker

R. E. Black

R. A. DeRossett

G. L. Naylor

W. M. Roberts