

Award No. 12841
Docket No. CL-12608

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Don Hamilton, Referee

PARTIES TO DISPUTE:

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

**CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL 4933) that:

1. Carrier violated the Clerks' Agreement when effective January 6, 1960, it abolished Baggage-man Position No. 312 at Calmar, Iowa, and unilaterally assigned the remaining duties thereof to employees outside the scope and application of that Agreement.
2. Carrier shall return the work assigned to and performed on Baggage-man Position No. 312 prior to its abolishment to the Clerks' Agreement and the employees covered thereby.
3. Carrier shall compensate Employee Harry Black, occupant of Position No. 312 at the time of its abolishment, for eight (8) hours at the straight time rate of Position No. 312 for January 6, 1960, and each day thereafter that the violation continues.

EMPLOYEES' STATEMENT OF FACTS: For many years the Carrier has maintained one or more positions covered by the Clerks' Agreement at Calmar, Iowa. United States Labor Board Award No. 1986, which became effective on October 16, 1923, shows the following positions covered by the Clerks' Agreement at Calmar, Iowa, when that Award became effective:

Position No. 16 — Clerk

Position No. 17 — Foreman

Position No. 18 — Checker

Position No. 19 — Checker

— Truckers (3)

The Carrier continued to maintain several positions covered by the Clerks' Agreement at Calmar until sometime between January and July, 1932, when

The Carrier wishes to point out that Claimant Black has suffered no lost earnings since being affected by the abolishment of Baggage-man Position No. 312 at Calmar effective January 6, 1960, as each position he has occupied since that date has carried a rate of pay higher than that of Position No. 312.

There is no basis for this claim. There has been no violation of the schedule rules. The Carrier respectfully requests that the claim be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: In this claim Petitioner alleges that Carrier violated the Clerks' Agreement when it abolished the position of baggage-man at Calmar, Iowa, on January 6, 1960.

The employees contend that the violation stems from the assignment of the remaining duties of the aforesaid position to employees outside the scope of the Clerks' Agreement.

Carrier submits three basic contentions for its defense of this action. First, it says that the special "one man station agreement" is controlling; second, that "position" is not synonymous with "work" as employees contend, and, third, that the Scope Rule is general in nature, thereby necessitating systemwide proof of exclusive performance of the disputed duties.

There is ample evidence and a great many awards which point out and affirm that the Scope Rule of this Agreement has been considered as general by this Board. We direct your attention specifically to Award 12360. Such being the case, it is necessary to look to tradition, past practice, and custom to see who customarily performs these duties.

In this claim, it is the opinion of the Board that such requirements have not been met, and such exclusive performance of duties has not been shown either systemwide or at this particular location. Therefore, the claim is denied.

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 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 August 1964.