Award No. 12848
Docket No. CL-12906

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Robert J. Ables, Referee

PARTIES TO DISPUTE:

RAILROAD DIVISION, TRANSPORT WORKERS UNION OF AMERICA, AFL-CIO

DONORA SOUTHERN RAILROAD COMPANY

STATEMENT OF CLAIM: Request that Mr. Schmalbach be paid the Storekeeper's rate of pay for the week of June 20th through June 24th, 1960 as on each of the following dates: June 20, 21, 22, 23, and 24, 1960 the position of the Storekeeper was made vacant because regular Storekeeper was on vacation and in accordance with Rule 21-b of the Clerk's Agreement this position should have been filled.

EMPLOYES' STATEMENT OF FACTS: Mr. Schmalbach is an employe of the company and is covered by the Clerk's Agreement and was a furloughed employe on the above mentioned days.

On the days in question other employes in other departments did work and this meant that these employes had to get material out of the stores department to do their work plus making out reports for the material taken out of the store department. This work should have been done by the Storekeeper.

This case was handled on the property of the company and is known as Claim CL-12-60.

The Railroad Division, Transport Workers Union of America, AFL-CIO does have a bargaining agreement, effective July 16, 1953 and revised October 1, 1957 with the Donora Southern Railroad Company covering the Clerical, Office, Station and Storehouse Employes, copies of which are on file with the Board and which are by reference hereto made a part of these Statement of Facts.

POSITION OF EMPLOYES: That Mr. Schmalbach is the employe that was entitled to do the work that must have been done by employes of other departments since there were employes working for the company in other departments and they had to get material from the stores department to perform their work.

That when Mr. Schmalbach was not used while the regular Storekeeper was on vacation, but other employes did the Storekeeper's work that Rule 21-b of the agreement was being violated. This rule reads as follows:

Subject to the foregoing, and expressly reserving its rights in connection therewith, Carrier submits the following.

Rule 21(b), relied upon by the Organization, was not violated. It merely covers the method of filling vacancies. It is not a guarantee that all vacancies will be filled. Since the vacancy involved is a vacation vacancy it is governed by Article 12(b) of the National Vacation Agreement which provides that "* * * such absences from duty will not constitute 'vacancies' in their positions under any agreement." And Article 6 provides that such vacancies need not be filled.

If although not included in the claim it is considered material that shopmen obtain materials for their own use from the storeroom, such procurement of materials has never been considered, either on this property or under Awards of this Division, as an encroachment upon the rights of clerks.

Both before and after negotiation of the first Schedule Agreement for clerks on this Carrier shopmen have entered the storeroom to obtain materials for their own use, both on turns when no storekeeper was assigned and even when a storekeeper was on duty; and up to the date of these claims the practice was never protested nor a rule requested that would restrict other than storekeepers from entering the storeroom for material.

In addition, numerous Awards of this Division sustain the Carrier's position.

In Award No. 5391 second and third trick stockkeepers' positions were abolished and the mechanical forces obtained materials they required and reported its use on forms provided for that purpose. As in the instant case no accounting or record work was done by the mechanics. This Division, with Referee Alex Elson, held:

> "The only issue is whether the procural of materials from the storeroom by mechanics under the specific circumstances of this case is work within the agreement. We have carefully considered the record in this case and the awards cited by petitioner. In our opinion the work in question is not work within the agreement, and the claim, therefore, cannot be sustained."

That the practice as existing on this property is not a violation is supported by the decision of this Division, with Referee Dudley E. Whiting, in Award No. 7076:

> "OPINION OF THE BOARD: The essence of the claim is an alleged violation of the scope rule. That rule does not purport to describe the work encompassed but merely lists the classes of positions covered. We have regularly held that in such case it is necessary to look to custom, tradition and historical practice to ascertain the work reserved exclusively to the craft by the contract."

In Award No. 5397 the Carrier abolished the position of storekeeper and thereafter Motive Power and Car Department employes obtained needed materials themselves from the store building. The Board, with Referee J. Glenn Donaldson, held in part:

> "We find nothing in conflict with the rules insofar as the procuring and handling of supplies by the using department is concerned in the

instant case. Clerks do not have exclusive right to this work and where incidental and necessary to the work of others, it is permissible practice for the latter to act once custody is transferred."

For the foregoing reasons, it is respectfully submitted that this claim must be denied.

OPINION OF BOARD: When the industry served by this Carrier drastically reduced operations, railroad operations were correspondingly reduced from 11 crews to 1 crew per day working 5 days per week. The regular incumbent of the storekeeper's position took a week's vacation shortly thereafter.

Relying on that part of Rule 21(b) which states that ". . . vacancies of less than ten (10) calendar days duration shall be considered short vacancies and may be filled without advertising," the Employes contend that the Claimant, who was furloughed at the time, should have been called to fill the vacant storekeeper's position. Further, the Employes contend that the Claimant "was entitled to do the work that must have been done by employes of other departments since there were employes working for the company in other departments and they had to get material from the stores department to perform their work."

Without rebuttal by the Employes, the Carrier shows "that a storekeeper was never assigned on second or third turn, and that on all turns, regardless of whether or not there was a storekeeper on duty, it was the practice for shopmen to enter the storeroom to obtain materials for their own use. This practice existed prior to 1953 when the first Clerk's Agreement was negotiated." Carrier also relies on Articles 6 and 12(b) of the National Vacation Agreement of December 17, 1941 to establish that a vacation does not in all cases constitute a vacancy required to be filled by another employe.

Since the claim fails to set forth the nature and extent of performance of the disputed work or when or by whom it was performed, the claim is lacking in the specificity required by Section 3, First (i) of the Railway Labor Act. Further, the Carrier has demonstrated that the practice on this property is for shopmen to obtain materials for their own use from the storeroom, whether or not the storekeeper is on duty. Accordingly, the claim must be denied.

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 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 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 9th day of September 1964.