Award No. 12897
Docket No. CL-12501

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Levi M. Hall, 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-4911) that:

1. The Carrier violated the provisions of the Clerks' Agreement when effective March 4, 1960 it abolished Chauffeur Position No. 101 in the Store Department at Minneapolis and assigned the remaining chauffeur work to employes in the Car Department.

2. Employe H. O. Borseth be compensated for eight (8) hours at the chauffeur rate of pay for each day subsequent to March 4, 1960 until date chauffeur work is returned to be performed by employes under the Clerks' Agreement.

EMPLOYES' STATEMENT OF FACTS: For many years the Store Department employes performed the chauffeur work in the Car Department light repair yard at Minneapolis, Minnesota. The work consisted of hauling car material from the Store Department to the yard, hauling wheels to the place of use, hauling scrap wheels back to the loading crane and all work connected with lift truck operation.

In November 1958 all positions except three in the Store Department at Minneapolis were transferred to St. Paul. The three remaining positions were the General Foreman, held by Arthur Maschke; Sectional Stockman, held by Clifford Haggem; and Storehelper, held by C. Mattson. Storehelper Mattson was assigned to perform the chauffeur and crane operator work which remained at Minneapolis and he was compensated at the crane operator and chauffeur rates, respectively.

In September 1959 Carrier abolished the storehelper position. Following the abolishment, Carrier transferred a chauffeur daily as needed from St. Paul to Minneapolis to perform the chauffeur work. This arrangement did not work out satisfactorily. Therefore, on October 1, 1959 Carrier trans-

Department employes at Minneapolis but to the contrary all remaining work of abolished Chauffeur Position No. 101 at St. Paul was transferred to the remaining chauffeur positions at St. Paul.

Car Department employes at Minneapolis are not now performing, nor have they at any time since chauffeur Position No. 101 at St. Paul was abolished on March 4, 1960 performed any work formerly performed by the occupant of abolished Chauffeur Position No. 101. In other words, Car Department employes at Minneapolis are not now performing, nor have they at any time since Chauffeur Position No. 101 at St. Paul was abolished on March 4, 1960 performed any work which they have not always performed.

The Carrier submits that in view of the foregoing it is readily apparent that there is absolutely no basis for the instant claim nor has there been a violation of the schedule rules and the Carrier respectfully requests, therefore, that the claim be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: Prior to November 1958, Claimant H. C. Borseth, occupied Chauffeur Position No. 101 in the Store Department at Minneapolis, Minnesota, the work consisting of hauling material from the Store Department to the yard, hauling wheels to the place of use, hauling scrap wheels back to the loading crane and work connected with lift truck operation in the Store Department. In November 1958 all positions excepting three were transferred to St. Paul, Minnesota, position No. 101 included. The storehelper whose position was excepted was assigned to perform the chauffeur and crane operator work which remained at Minneapolis. In September 1959, the Carrier abolished the storehelper position and transferred a chauffeur daily, as needed, from St. Paul to Minneapolis to perform the chauffeur work. On March 1, 1960, Carrier abolished Chauffeur Position No. 101, effective March 4, 1960.

The Scope provision of the Agreement under consideration before this Board, insofar as pertinent, reads, as follows:

"(a) These rules shall govern the hours of service and working conditions of the following class of employes, subject to exceptions noted below:

* * * * *

"Group 2 . . . . .

Crane Operators, Chauffeurs, Truck Drivers, Tractor Operators, Lift Truck Operators and operators of other automotive equipment and their helpers."

"(e) * * * * *

Positions within the scope of this agreement belong to the employes covered thereby and nothing in this agreement shall be construed to permit the removal of positions from the application of rules, except in the manner provided in Rule 57."

It is the contention of the Claimant that the work, herein involved, is work theretofore assigned to and performed on Store Department chauffeur positions and that Carrier violated the Agreement when it unilaterally removed that work from the scope and application of the Clerks' Agreement and assigned it to Car Department employes who are covered by another Agreement.

Carrier contends, to the contrary, that the chauffeurs work involved here had never been exclusively performed by clerks on its system; that historically the work had been performed both by Car Department employes subject to the Railway Carmen's Agreement and employes subject to the Clerks' Agreement; that when Chauffeurs Position No. 101 was abolished the work of that position remaining was assigned to other employes holding chauffeurs positions under the Clerks' Agreement and the Car Department employes continued to do the work they had always been doing.

In Award 12360 — Dorsey, between the same parties and involving the same Agreement, we note the following:

> ". . . In answer, Carrier admits that Clerks had performed the duties; but, that the duties had also been performed by other crafts and classes of employes. With issue thus joined — the Scope Rule of the Agreement being what we have consistently characterized as general — Petitioner, if it is to prevail, must prove that historically, traditionally, usually and customarily the listed duties have been exclusively performed by Clerks on Carrier's system. This is such a well established principle that we see no need for citing the hosts of precedent Awards.

See also Award 11755 — Hall, between the same parties, and awards therein cited.

It is not enough for Petitioner to merely show that employes covered by the Agreement have performed the work. More than that, Petitioner must prove that employes have performed the work to the exclusion of all others to sustain the Claim.

We find the following admission by Petitioner in the record: "**While undoubtedly there were occasions when some item or items of the work involved were performed by Car Department employes, the Employes contend that all items** of such work were performed by Store Department employes with regularity sufficient to establish the work as covered by the Clerks Agreement." (Emphasis ours)

Claimant further asserted that when Chauffeurs Position No. 101 was abolished that the work was assigned to Car Department employes covered by another Agreement; Carrier controverted that assertion, contending that the work remaining under Position 101 was distributed to other chauffeurs under the Clerks Agreement. There is no proof in the record to support Petitioner's assertion that the functions of the abolished position were transferred to employes outside the Clerks' Agreement.

Claimant has not only failed to sustain the burden of proving that the work involved here was exclusively reserved to Clerks under the Agreement but has offered no proof that the functions of the abolished position were transferred to employes outside the Clerks' Agreement.

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 has not been violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 17th day of September 1964.