# Award No. 13195
# Docket No. CL-13005

## NATIONAL RAILROAD ADJUSTMENT BOARD

## THIRD DIVISION

**William H. Coburn, Referee**

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## PARTIES TO DISPUTE:

## BROTHERHOOD OF RAILWAY & STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS & STATION EMPLOYES

## UNION PACIFIC RAILROAD COMPANY — EASTERN DISTRICT

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood (GL-5067) that:

(1) Carrier violated the current Clerks' Agreement when on November 14, 1960 it required or permitted General Yardmaster, D. E. Moore, an employe not covered by the Agreement, to transport one train and engine crew from the Yard Office at Grand Island, Nebraska to the East End of the Grand Island Yards in his private automobile and on his return trip permitted or required him to handle two engine crews.

(2) Carrier shall now compensate C. L. Parsons, Crew Caller-Driver, under Rule 39 of the Agreement effective May 1, 1955 or two hours for November 14, 1960 at time and one-half rate of Crew Caller-Driver.

**EMPLOYES' STATEMENT OF FACTS:** On November 14, 1960 at about 10:30 P. M., Chief Dispatcher instructed the Crew Caller-Driver on duty at Grand Island to go to Hastings, Nebraska to pick up two train and engine crews and return them to Grand Island. The regular Grand Island to Hastings Crew Caller-Driver was being held at Hastings to pick up train and engine crews due to a derailment on the branch line between Gibbon and Hastings.

At about 11:30 P. M. General Yardmaster D. E. Moore transported in his private automobile one train and engine crew from the Yard Office to the East End of the Grand Island Yards and on his return trip handled two engine crews.

Claim was filed by Crew Caller-Driver C. L. Parsons for a call and declined by Trainmaster in his letter of November 17, 1960, on basis:

"Claim declined account no violation of any B. of R.C.

See Employes' Exhibit No. 1.

Appeal is taken from Trainmaster's decision. See Employes' Exhibit No. 2, letter of C. L. Paul, November 20, 1960 to Trainmaster.

as Truck Driver and the job description states 'Drive Mechanical truck'; the right to transport men and material by other means is not reserved to Claimant's position either by the rules, the job description or practice."

Even assuming the Organization were correct in its contention in the instant case, to which we do not subscribe, that the work in question belonged exclusively to the Brotherhood of Railway Clerks, under the prevailing conditions an emergency clearly existed and there, in any event, would be no basis for this claim. On the night of November 14, 1960 one crew caller-driver departed from Grand Island at 9:30 P. M. to go to Hastings and returned at 11:45 P. M. The other crew caller-driver was dispatched from Grand Island at 10:30 P. M. to go to Hastings and returned at 12 Midnight.

At 10:25 P. M. a crew was called for Extra 409 East for 11:35 P. M. It requires approximately 1 hour and 30 minutes to make a round trip between Grand Island and Hastings, therefore, the General Yardmaster was fully justified in believing that the crew caller-driver who had departed at 9:30 P. M. would return to Grand Island before 11:35 P. M.

When the train crew arrived at the yard office shortly before 11:25 P. M. and there was no crew caller-driver available to take them to the train, the General Yardmaster immediately transported the crew, which he has previously done, to the train.

The train departed at 12:05 A. M. If Claimant Parsons had been called at 11:25 P. M. there is no showing he would have been available for service, and had he been available it is certain he could not have arrived at the yard office, and taken the crew to the train in time for the crew to make necessary arrangements for departure, without incurring considerable delay to the train.

While there was some difficulty in establishing whether or not an additional vehicle was available at Grand Island which could have been used to transport this crew, the claim does not turn on this fact. It has been the practice at Grand Island to use two vehicles, whether they were station wagons, carryalls, pick-up trucks or buses for transporting crews in the Grand Island yard and between Grand Island and Hastings and in the Hastings yard. On the night of the alleged violation two vehicles and drivers were being used and, therefore, there was no deviation from past practice.

The Carrier has conclusively shown that the transporting of crews is not work reserved exclusively to employes represented by the Organization under the Scope Rule or any other rule of the agreement. Therefore, there has been no agreement violation.

In view of the facts presented and for the reasons stated herein, the claim is not supported by the Clerks' Agreement and should be denied.

(Exhibits not reproduced).

**OPINION OF BOARD:** This claim is based upon an alleged violation of the Scope Rule of the effective Agreement.

The material facts are not in dispute. A General Yardmaster on claim date transported a train and engine crew from the Yard Office at Grand Island, Nebraska, to its train in the East End of the yard and there picked

up and returned two engine crews to the Yard Office. He used his own car in so doing.

Crew Callers, covered by the Clerks' Agreement, who were on duty at the time were not immediately available, being engaged in transporting other crews to the site of a derailment at Hastings, Nebraska, some 12 miles away.

Claimant, a qualified Crew Caller, was on his rest day, and, according to the Employes, should have been called and used to transport the crew to its train.

The sole issue here is whether employes assigned as Crew Callers at Grand Island had an exclusive right to perform the work of transporting engine and train crews to and from their trains.

As support for the basic contention that the Scope Rule of the Agreement confers the exclusive right on covered crew callers to perform the work in dispute, the Employes direct the Board's attention to the Wording of the bulletins advertising the jobs and to a letter agreement of December 4, 1948. This evidence has been considered, but, in our opinion, lends no support to the Employes' case.

The aforesaid bulletins (Emp. Ex. 13) contain the following language upon which the Employes lay great stress:

> "Duties: Call crews. Must be qualified automobile driver, and possess Nebraska Driver's License."

No duties relating to transportation of persons or things are specified, but even if, by implication, such duties could be ascertained as those of transporting train crews, this, standing alone, could not properly or reasonably be held to confer an exclusive contractual right to perform them. (Cf. Award 7166). A job bulletin is merely an advertisement and not in the legal sense, an offer, the timely acceptance of which would constitute a binding contract. Its nature is informational, not contractual. It cannot be employed to create, modify or destroy legal relations such as those embodied in the basic Agreement between these parties. (Cf. Awards 10095 and 11923). Accordingly, the Board finds of no force or effect the bulletin evidence offered to describe work giving rise to an exclusive contractual right.

Nor is the letter agreement of 1948 (supra) evidence tending to support the Employes' basic contention. It is concerned solely with rates of pay for Crew Callers and messengers at certain terminals on the Carrier's Eastern District when these employes are required to transport trainmen via Carrier-owned trucks or station wagons between specified points. It does not purport to be, nor can it be so construed as, a substantive grant of exclusive rights to covered employes to transport such crews.

Finally, the Scope Rule itself merely lists "* * * train and engine crew callers * * *" without describing the duties attaching thereto. It is now almost axiomatic that a Scope Rule job listing, standing alone, confers no exclusive right to the work of the position so listed. Proof of such right must be adduced from credible evidence of traditional and customary performance of the disputed work by the employes covered by the rule. (Awards 11708, 11784, 11791, among many others).

That required proof has not been made here. The Carrier has shown by uncontroverted evidence that others, including a Taxi Cab Company under

contract and officials of the Carrier, have performed the disputed work as a customary practice on this property. In the face of such evidence, the Employes cannot establish exclusive work performance. Failure so to do is fatal to the success of this claim. It will, therefore, be 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 Employes involved in this dispute are respectievly 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 18th day of December 1964.