Award No. 13580
Docket No. CL-14041

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Benjamin H. Wolf, Referee

PARTIES TO DISPUTE:

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

ILLINOIS CENTRAL RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5300) that:

(a) The Carrier violated the Clerks' Agreement at 63rd Street General Office Building, Chicago, Illinois, when on August 1, 1961, it abolished two (2) regular Watchmen's positions, (Position No. 2267 occupied by Curtis S. Huguley, and Position No. 631 occupied by James L. Hoskins) also Relief Watchman's position occupied by John W. Roberts, who relieved Messrs. Huguley and Hoskins on their respective rest days, and concurrently removed this work from the scope and operation of the Clerks' Agreement by assigning Patrolmen employed in the Special Agent's Department, which employes are without the scope and coverage of the Clerks' Agreement, to perform this identical class of work that has been performed by Messrs. Huguley, Hoskins and Roberts; and

(b) That the Carrier shall now be required to restore those Watchmen's positions and work attaching thereto to the scope and coverage of the Clerks' Agreement as the positions and work existed prior to August 1, 1961; and

(c) That Curtis S. Huguley be compensated for wage losses he suffered from August 1, 1961, to August 8, 1961; and that Extra Janitor, Isaiah Perry, be compensated for wage losses he suffered for all days subsequent to August 8, 1961, to the date that this matter is satisfactorily disposed of; that James L. Hoskins and John W. Roberts be compensated for wage losses they suffered from August 1, 1961, and forward to the date that this matter is satisfactorily disposed of.

NOTE 1: Wage losses suffered by the Claimants in question to be determined by a joint check of Carrier's payroll and other records.

NOTE 2: The reason for the monetary claim in favor of Claimant Curtis S. Huguley being limited only from August 1, 1961, to August 8, 1961, is due to the fact that Mr. Huguley applied for his retirement annuity under the provisions of the Railroad Retirement Act; therefore, senior Extra Janitor, Isaiah Perry was substituted as Claimant in place of Curtis S. Huguley.

EMPLOYES' STATEMENT OF FACTS: There is in effect between the Carrier and this Brotherhood an agreement, effective June 23, 1922, as subsequently revised, covering working conditions of the employes represented by this Brotherhood, which agreement has been filed with the National Railroad Adjustment Board, as provided for in the Railway Labor Act, as amended, and this agreement will be considered a part of this Submission. Various rules thereof will be referred to herein from time to time and quoted either in full or in part.

Prior to August 1, 1961, there were two (2) regular Watchmen's positions at 63rd Street General Office building. One position (No. 2267) was occupied by Curtis S. Huguley, whose work week was Saturday through Wednesday, rest days Thursday and Friday, hours of service from 4:30 P.M., to 12:30 A.M., rate of pay $18.16 per day. The other position (No. 631) was occupied by James L. Hoskins, whose work week was Monday through Friday, rest days Saturday and Sunday, hours of service 11:30 P.M., to 7:30 A.M., rate of pay $18.16 per day. In addition to the two (2) regular Watchmen's positions in question, there was a Relief Watchman's position occupied by John W. Roberts, who was used to relieve Messrs. Huguley and Hoskins on their respective rest days, mentioned above. On Wednesdays Mr. Roberts worked as Janitor to fill out his five-day work week, and his rest days were Monday and Tuesday.

At this time the Employes desire to point out to your Honorable Board the fact that positions designated as — "office, station and warehouse watchmen" — are specifically spelled out in the Scope Rule (Rule 1) of the Agreement between this Brotherhood and the Carrier, and for ready reference and information Employes quote the pertinent provisions obtaining in the Scope Rule (Rule 1) of the Agreement extant between the parties, to wit:

"These rules shall govern the hours of service and working conditions of the following employes, subject to the Exceptions noted below:

(1) Clerks:

(a) Clerical workers;

(b) Machine operators.

(2) Other office and station employes — such as office boys, messengers, chore boys, train announcers, gatemen, baggage and parcel room employes, train and engine crew callers, operators of certain office or station appliances and devices, telephone switchboard operators, elevator operators, **office, station and warehouse watchmen** and janitors. (Emphasis ours.)

(3) Laborers employed in and around stations, **storehouses** and warehouses.

5. That, in establishing police positions to guard against vandalism and theft in addition to fires and concurrently abolishing the fire watchman positions, the company did not violate the clerks' agreement.

Accordingly, the company requests the Board to deny the union's claim in its entirety.

(Exhibits not reproduced.)

OPINION OF BOARD: This case involves a primary dispute and several secondary disputes. The primary dispute is over the right of the Carrier to abolish three watchmen's jobs which were covered by the Clerks' Agreement and establish new positions to which patrolmen, not covered by the agreement, were assigned.

One secondary dispute arose out of the admitted fact that Carrier did not give notice, as required by the effective agreement, to the Local and Division Chairmen that the positions were to be abolished.

Carrier argued that since no one suffered a loss as a result of the failure to give notice, which it called a "technical violation", no penalty should be imposed. It also urged that no penalty could be assessed because the agreement does not provide a penalty for such a technical violation.

The Organization argued that it was damaged by being deprived of the opportunity to discuss it and to attempt to dissuade Carrier from carrying out the proposed abolishment before it became effective, after which positions harden and are less likely to be changed.

The record indicates that Claimant Hoskins was also the Local Chairman. He received notice that his position was to be abolished and, if he was so inclined, could have instituted discussions and attempted to dissuade Carrier from carrying out the abolishment. The record is silent that he made such an effort. The argument of the Organization that it was damaged by having been deprived of this opportunity is, therefore, more theoretical than actual. In the absence of proof of actual damage a failure to give such notice cannot be held to have prejudiced the position of the Claimant and, therefore, requires no rectification.

It is not significant that Claimant Hoskins had notice of the abolishment of only his own position and not the other two. Since the Organization did not act before the effective date on one position, there is no reason to believe that it would have acted on the other two had it been given notice. Hoskins, as the Local Chairman, was most apt to act on the actual knowledge he had that his own job was to be abolished.

The facts upon which the primary case is based are not in dispute in any essential aspect. Carrier's General Office Building is located in a section of Chicago which has seriously deteriorated in the last few years to become a location which has one of the country's highest crime rates. There have been many instances of criminal acts against the property and person of employes that have occurred in the vicinity of the building. A number of unauthorized adults have been seen in the building and a concessionaire reported that many of its coin-machines have been rifled.

The increasing incidence of crime and the fact that there is very valuable IBM equipment in the building persuaded the Carrier that it needed the protection of patrolmen rather than of watchmen. It accordingly abolished the watchmen's positions and established the patrolmen's positions.

The Organization argued that incumbents of the new positions performed the identical class of work as those of the old and that under the Scope Rule the positions belonged to the Organization. The Scope Rule of the subject Agreement is general in nature in that duties of the positions named are not defined. This Board has frequently held that where the Scope Rule is general in nature, the right to specified work will be reserved exclusively to the Organization if the work was by history, custom and tradition performed exclusively by its members. Awards 11755, 11643, 11334 and many others, too numerous to mention.

We have also held that the resort to history, custom and tradition must be system-wide rather than that of the particular position where the Agreement, as in this case, is system-wide. Awards 13048, 11526 and others.

The record indicates that patrolmen have performed the duties of watchmen either as their principal duty or as incidental to their principal duties at 26 other locations of the system. It follows that the Scope Rule does not support the claim.

The Organization further claims that Carrier may not unilaterally and arbitrarily remove work from the confines of an Agreement and assign it over to others. It relies on Awards 180 and 385 and many awards which cite those awards as authority. These awards, in the main, ignore the distinction, now commonly accepted, between a specific and a general Scope Rule with respect to exclusivity. This argument is merely another way of asserting the claim of exclusivity.

We do not think that Carrier acted arbitrarily. Its decision to replace watchmen with patrolmen was a proper exercise of its managerial prerogatives. There was ample reason to support such a decision. The watchmen were used mainly to watch for fires. The changed character of the neighborhood and the increased value of the equipment in the building dictated that police protection was necessary. Once this need was determined, it could be satisfied only by establishing patrolmen positions. Fire watching was the principal duty of the positions abolished became an incidental duty of a patrolman. For the Organization to insist that the watchman's position be continued under such circumstances can be supported only if there is a contractual obligation to do so.

The Organization's arguments that patrolmen were not needed inside the building, or that watchmen could have been given authority to perform police duties are arguments as to how management's rights should have been exercised. Neither the Organization nor this Board may tell management how to run its business. We may only say what it may not do, when its actions are in violation of an agreement.

Having decided the primary case in favor of the Carrier, the other secondary claims become academic.

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 14th day of May 1965.

LABOR MEMBER'S DISSENT TO AWARD 13580, DOCKET CL-14041

This Award is but additional proof that Employes should no longer look to this Board for justice.

The Referee, after having convinced himself that the Employes were attempting to "interfere" with management's prerogatives, stated:

> "* * * Neither the Organization nor this Board may tell management how to run its business. We may only say what it may not do, when its actions are in violation of an agreement."

Not only may we say what Carrier may not do when its actions are in violation of an Agreement, it is our solemn obligation to do so; and here, as in too many cases, the Referee decided such violation was of no consequence or "academic." The purpose of this Board, and the Referees sitting with it, is to interpret agreements as written and not, as here, ignore Agreement rules and inject one's own "laissez faire" philosophy into a dispute and make it prevail in the face of an outright violation of the written contract.

Employes had a just claim because the Carrier violated the Agreement when it failed to follow the prescribed procedure for "abolishing" positions. Moreover, the Employes had every right to expect the Agreement they had reached to be fulfilled and, if not, to be able to come to this Board for an interpretation and a remedy designed to insure and protect the integrity of their Agreement. It may well be that demanding that the terms of the Agreement be properly complied with "interferes" with management's prerogative; **but those prized "prerogatives" were bargained for here and prescribed in the Agreement which Carrier violated. Yet, in this Award no remedy was allowed and, in fact, the violation was excused.**