Award No. 13740
Docket No. CL-14338

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John H. Dorsey, Referee

PARTIES TO DISPUTE:

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

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5436) that:

(1) The Carrier violated and continues to violate the terms of the Clerks' Agreement at McCook, Nebraska, beginning at close of work October 31, 1962, when it removed work belonging to Store Department employes covered by said Agreement and concurrently therewith, transferred the work, duties and operation to employes occupying positions in the Mechanical Department at McCook, Nebraska, in a separate seniority district and/or covered by other craft agreements to perform said work.

(2) The Carrier shall return the work formerly attached to the positions of Local Storekeeper Job No. 8132, and Revolving Crane Operator, Job No. 8188, both located in the Store Department Seniority Districts at McCook, Nebraska to that class of employes who occupy positions coming within and under the craft or class of Storehouse employes referred to in Rule 1 of the Agreement.

(3) Mr. M. P. Wallace, who occupied the position of Local Storekeeper be compensated for the difference in his former rate as Local Storekeeper, McCook Store ($22.76 per day) and that of Office Stockman, Job No. 8032, Aurora Store ($21.35 per day) beginning November 1, 1962, and each work day thereafter until the violation cited herein is corrected.

(4) Mr. A. Wickizer, who occupied the position of Revolving Crane Operator, Job 8188, prior to November 1, 1962, be compensated eight (8) hours pro rata rate ($2.3928 per hour) beginning November 1, 1962, and each work day thereafter, Monday through Friday, that Mr. Wickizer is unable to hold a position in the craft or class of employes referred to in Rule 1 of the Agreement.

(5) Mr. M. G. Harwig, who occupied the position of Office Stockman, Job No. 8032, Aurora Store, until displaced by Mr. M. P. Wallace, be compensated for the difference in his former rate as Office Stockman, Job 8032 ($21.35 per day) and that of Office Stockman Job No. 8040 ($20.69 per day) beginning with the first day he was displaced by Mr. Wallace (on or about November 1, 1962) and each work day thereafter until the violation cited herein is corrected.

Mr. Roy Snell, who occupied the position of Office Stockman, Job No. 8040, Aurora Store, be compensated for the difference in his former rate as Office Stockman ($20.69 per day) and that of House Stockman, Job No. 8031 ($20.99 per day) beginning with the first day he was displaced by Mr. M. G. Harwig (on or about November 1, 1962) and each work day thereafter until the violation cited herein is corrected.

Mr. B. H. Lorang, who occupied the position of House Stockman, Job No. 8031, Aurora Store, be compensated for the difference in his former rate as House Stockman ($20.99 per day) and that of Office Stockman, Job No. 8039 ($20.39 per day) beginning with the first day he was displaced by Mr. Snell, (on or about November 1, 1962) and each work day thereafter until the violation cited herein is corrected.

Mr. Ray Parks, who occupied the position of Office Stockman, Job No. 8039, Aurora Store, be compensated for the difference in his former rate as Office Stockman ($20.39 per day) and that of Foreman-Coach Shop Sub Store, Job No. 8049 ($19.67 per day) beginning with the first day he was displaced by Mr. B. H. Lorang (on or about November 1, 1962) and each work day thereafter until the violation cited herein is corrected.

Mr. E. F. Ramirez, who occupied the position of Foreman, Coach Shop Sub Store, Job No. 8049, Aurora Store, be compensated the difference in his former rate as Foreman ($19.67 per day) and that of Inside Laborer, Job No. 8066 ($2.3328 per hour) beginning with the first day he was displaced by Mr. Ray Parks (on or about November 1, 1962) and each work day thereafter until the violation cited herein is corrected.

EMPLOYES' STATEMENT OF FACTS: Prior to October 31, 1962, the Carrier maintained a local store at McCook, Nebraska, with two employes who occupied positions coming under the scope of the Clerks' Agreement. The local store at McCook was on the territory of District Storekeeper at Havelock Store with the immediate supervision being performed by the District Storekeeper Lincoln Store, Lincoln, Nebraska.

The position of Local Storekeeper Job No. 8132 was occupied by Mr. M. P. Wallace with a rate of $22.76 per day.

Also located at McCook is a roundhouse and car repair track under the supervision of a Foreman in the Mechanical Department. Diesel road and switch engines are serviced and repaired at the roundhouse facilities. Freight cars are repaired on the car repair track.

Several hundred items of material was stocked, inventoried, ordered and records kept in the customary stock books by the Local Storekeeper. The

Third Division AWARD 11159

(BRC vs. NYC, Referee Donald F. McMahon)

"We are of the opinion the record here before us does not support the contentions of the Organization. There is no proof in the record here that clerks have the exclusive right to perform the work complained of, as provided by the Scope Rule of the Agreement. Nor does the record support any contention that any employes of the Clerks have suffered any loss of work or compensation to employes of another craft."

The Carrier summarizes its position as follows:

1. There is nothing in the collective Schedule Agreement, nor any special agreement, that prohibits this Carrier from abolishing positions and closing facilities no longer needed.

2. There was no work which clerks have exclusive right to perform, transferred to any other seniority district.

3. The only work assumed by other employes as a result of closing the Store Department facility at McCook is work that is incidental to their positions.

4. No increase in force in any other departments as a result of this change proves there is no basis for claim that a predominant portion of two positions was absorbed by others.

5. The number of "Class 63" points and points where material is "charged out" directly, that have always been in existence on this railroad, substantiates the Carrier's position that employes other than those represented by the Clerks' Organization have customarily and traditionally handled material and supplies for their respective departments.

6. Elimination of intermediate handling of material and supplies has been done at several other points on the railroad in the past, and thereby establishes sound precedent. Business conditions had declined to the point the Store Department at McCook was no longer needed, therefore, it was proper for that portion of the work incidental to the duties of employes who must necessarily be retained, to absorb it.

7. The Organization cannot prove that this work belongs to its employes to the exclusion of all other classes or crafts on Carrier's system.

8. Prior awards cited by the Carrier cover this issue and should control in this dispute.

The claim must be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: Carrier, in eliminating certain Stores Department handling of materials at McCook, Nebraska, unilaterally abolished two Clerks' positions at that location and transferred a part of the work to em-

ployes of the Mechanical Department. Clerks contend that Carrier's unilateral action in transferring part of the work to employes of the Mechanical Department violated the Scope Rule and Rule 24(a) of the Agreement.

The Scope Rule of the Agreement is general in nature.

Rule 24(a) reads:

"RULE 24.

TRANSFERRING POSITIONS OR WORK AND CONSOLIDATION OF OFFICES OR DEPARTMENTS

(a) When the Carrier elects to transfer positions or work from one seniority district to another or consolidate two or more offices, or departments, in whole or in part involving more than one seniority district, the Carrier will give the General Chairman as much advance notice as is practicable but not less than thirty (30) days of the change in order that they may meet and agree on the placement of employes affected thereby; togther with such changes in seniority districts that may be mutually agreed to between the Management and General Chairman. Conference shall be held as promptly as possible, so that agreement may be reached before the expiration of the thirty (30) days." (Emphasis ours.)

The gravamen of the Claim is that: (1) Rule 24(a) brings the positions and work involved within the scope of the Agreement; and (2) the Rule enjoined Carrier from abolishing the positions and transferring part of the work to the Mechanical Department without giving notice to the General Chairman and reaching agreement.

Clerks argue that Rule 24(a) must be equated to rules of other agreements which provide that "positions or work" once coming under the agreement cannot be removed from its coverage unless the carrier first satisfies prescribed conditions precedent; and, in interpreting rules of such substance we have held that the rule applies notwithstanding that there is no proof that the "work" had been exclusively performed by Clerks.

The rules of the other agreements, cited by Clerks, enjoin the transfer of "work" once under the agreement unless and until the carrier notifies the Organization of its desire to transfer the "work," confers with concerning and obtains agreement to the transfer. Rule 24(a) imposes no like injunction. By the use of the word "elects" it recognizes an unqualified right of Carrier to transfer "work." The notice, conference, and agreement provided for in the Rule concerns only "the placement of employes affected" by the transfer, "together with such changes in seniority districts that may be mutually agreed to between the Management and General Chairman." Therefore, the prayer of the Claim that Carrier "return the work" finds no support in the Rule.

Rule 24(a) does not enlarge the Scope Rule. It does not have the force and effect of the rules to which Clerks allude. It is applicable only to work within the Scope Rule.

Since the Scope Rule is general in nature Clerks have the burden of proving that the work transferred to the Mechanical Department had been

performed exclusively, on Carrier's property, by employes covered by the Clerks' Agreement. Clerks failed to satisfy the burden. We will deny the Claim.

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 23rd day of July 1965.

LABOR MEMBER'S DISSENT TO AWARD 13740, DOCKET CL-14338

In this case the Carrier did not comply with the provisions of Rule 24(a) with respect to giving the General Chairman at least thirty (30) days notice and the interpretation of Rule 24(a), set forth in the Award, is just not a reasonable construction of the language thereof. To spread the meaning of the word "elects" so as to refer also to the giving of notice and agreement through conference as to placement of employes and changes in seniority districts, gives much broader meaning to the word than common sense dictates.

Rule 24(a) reads:

> "When the Carrier elects to transfer positions or work from one seniority district to another or consolidate two or more offices, or departments, in whole or in part involving more than one seniority district, **the Carrier will give the General Chairman as much advance notice as is practicable but not less than thirty (30) days of the change** in order that they may **meet and agree on the placement of employes affected thereby**; together with such changes in seniority districts that may be mutually agreed to between the Management and General Chairman. **Conference shall be held as promptly as possible, so that agreement may be reached before the expiration of the thirty (30) days.**" (Emphasis ours.)

Obviously the Carrier committed itslf to giving at least thirty (30) days' notice and holding a conference as promptly as possible so that agreement might be reached before the changes contemplated by the rules took place.

In the instant case Carrier elected to transfer work but gave no notice; held no conference, and reached no agreement. Carrier should have been required to comply with the rule, instead of proceeding unilaterally without notice, and the Referee should have given some weight to the language in the Rule emphasized above instead of considering it surplusage and of no moment unless Carrier **elected** to give notice and **elected** to confer and **elected** to agree.

Contrary to the Award, common sense dictates that the only thing elective about the Rule was the Carrier's initial decision to transfer positions or work. Even from a cursory reading of Rule 24(a) one can readily understand what the Carrier **can do** and likewise one should also be able to comprehend exactly what the Carrier **must do** when it has made the election.

Carrier failed to do that which, through Rule 24(a), it had agreed to do. Consequently the Award is in error and I dissent thereto.

D. E. Watkins
Labor Member
8-2-65