

Award No. 13859

Docket No. CL-14229

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**(Supplemental)**

Herbert J. Mesigh, Referee

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**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-5336 that:

(1) Carrier violated and continues to violate rules of the Clerks' Agreement at Memphis, Tennessee, when on January 16, 1961, it assigned gatemen duties at its Central Station Passenger Depot to employes of its Special Police Department which employes hold no rights under the Clerks' Agreement.

(2) Extra Clerk H. J. Richardson be compensated a day's pay at the rate of Position No. 255, former Station Master's Clerk, hours 6:30 A.M. to 3:00 P.M., each day, Tuesday through Friday, beginning January 17, 1961.

(3) Extra Clerk A. L. Keenum be compensated a day's pay at the rate of Position No. 256, former Station Master's Clerk, hours 4:00 P.M. to 12:30 A.M., each day, Thursday through Monday, beginning January 16, 1961.

(4) Extra Clerk G. P. Babb be compensated a day's pay at the rate of former Relief Position No. CS-8, Sunday, Monday, Tuesday and Wednesday, of each week beginning January 16, 1961.

(5) Claim for other extra employes for like amounts shown in Claims 2, 3 and 4, who may be successor or successors in interest to those named who may have stood in the same status as claimants.

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Successors of interest involved are the extra clerks named in the order of their seniority rights as follows:

H. L. Ballard	C. L. Higginbotham
W. C. Stoddard	F. E. Thompson
C. L. Ledford	R. D. Robinson
C. L. Early	R. L. Shelly
E. M. Parker	B. B. Burns
J. E. Hughey	J. L. Park
H. L. Ferguson	F. E. Campagna
J. A. Jeffress	J. D. Duke
C. A. Rogers	J. Heimlicher
D. T. Robinson	L. C. Bailey

(6) Clerks N. R. Whitaker, M. L. Marshall and Eunice Medders, former occupants of abolished Positions Nos. 255, 256 and CS-8, respectively, be compensated for wage losses suffered, if any, during the period beginning January 16, 1961, and the date this dispute is resolved.

NOTE: Claim is to remain in effect until the claims are resolved.

**EMPLOYEES' STATEMENT OF FACTS:** There is employed at Memphis, Tennessee, a force of employees who perform the clerical work incident to the operation of Carrier's Passenger depot coming within the scope rule of the Clerks' Agreement, effective June 23, 1922, as revised.

Prior to January 16, 1961, two seven-day positions, titled Station Master Clerk, existed in the Station Master's office, Central Station, Memphis, Tennessee.

The positions, occupants, rates of pay, hours of service, etc., were as follows:

No. 255 — N. R. Whitaker, Station Master Clerk, \$19.33 — 6:30 A.M.—3:00 P.M., Tuesday through Saturday.

No. 256 — M. L. Marshall, Station Master Clerk, \$19.33 — 4:00 P.M.—12:30 A.M., Thursday through Monday.

CS-8 — Eunice Medders

Relief No. 10 — 5:30 A.M.—2:00 P.M. — Saturday

Relief No. 255 — 6:30 A.M.—3:00 P.M. — Sun. & Mon.

Relief No. 256 — 4:00 P.M.—12:30 A.M. — Tues. & Wed.

Effective at the expiration of their respective tours of duty, Sunday, January 15, 1961, Positions Nos. 255, 256 and CS-8 were abolished.

Among various duties regularly assigned to the Station Master Clerk positions were those in connection with the performance of gateman duties which had been added thereto several years ago when gateman positions were abolished. These gateman duties included announcing train departure, information over the public address system, operating the gates through which passengers passed when boarding passenger trains, checking each ticket, punching same and directing passengers to the location where trains could be boarded.

January 16, 1961, the date on which the Station Master Clerk positions were abolished, the clerical duties attaching thereto other than gateman duties were reassigned to various other clerical positions. Those duties inci-

**OPINION OF BOARD:** Prior to January 16, 1961, two seven-day positions titled Station Master Clerk, existed in the Station Master's office, Central Station, Memphis, Tennessee. Among various duties regularly assigned to the Station Master Clerk positions were those in connection with the performance of gateman duties. Effective January 15, 1961, positions Nos. 255, 256 and CS-8 Relief, were abolished by the Carrier. The clerical duties attaching thereto, other than gateman duties, were reassigned to various other clerical positions.

The Employees allege the Carrier violated the Clerks' Agreement on "January 16, 1961, the date on which the Station Master Clerk positions were abolished the clerical duties attaching thereto other than gateman duties were reassigned to other clerical positions. Those duties incidental to operating the gates, checking passengers' tickets and directing passengers to trains were reassigned to employees of Carrier's Special Police Department employees of another craft or class, who hold no rights under the Clerks' Agreement." That such reassignment of gateman duties violates Rule 1, Scope, wherein "gateman" listed therein reserves the work to them and that said duties have been exclusively performed by Clerks.

Carrier denies that the work in question was reassigned to others outside the Scope; that the Special Police are now performing the same duties which they have traditionally performed; that Carrier abolished the position when the work which necessitated the assignment of gateman had been eliminated.

The Employees have limited the term of the claim to the period beginning January 17, 1961, and ending February 3, 1962.

The merit of the claim before this Board rests upon the interpretation and application of the Scope Rule of the Agreement. The Scope Rule of the Agreement is general in terms, and the term "gateman" does not specify the work reserved to such employees. The mere listing of positions in the Scope Rule does not create an exclusive right to the work. This Board has interpreted the Scope Rule between these same parties in Awards 13580, 13255, 12331, 11793, holding to the principle established by prior awards of this Division. That principle established: when general in form, the Petitioner has the burden of proving that the work involved has been historically, customarily and exclusively performed by employees covered by the Agreement; and where the Agreement is system wide, the employees must also show the work involved is performed exclusively by them throughout the system. Performance alone does not give the Claimants exclusive right to the work.

In support of their claim, the Organization relies upon Awards 180 and 4977; however, these Awards are distinguishable from the instant case. The terms enumerated in those Scope Rules were interpreted as designating a distinct, specific category, and classification of the work to be performed. Said work was not found to be incidental to a position covered by some other agreement. Gateman work in the present Scope Rule is not specifically identified as belonging to, or exclusively reserved for, the Claimants, but listed as a position only.

Both parties have introduced several individual employee statements, which are self-serving, self-supporting, declarations of interest, purporting to support their respective positions. The Board has weighed all factual assertions presented in the voluminous record, and find that the Petitioner

has failed to present sufficient probative evidence to meet the burden of proof required to support its claim. Mere assertions of having performed the work many years is not prima facie in meeting the burden of proof. Such assertion alone does not shift or meet the burden. Well established principles of this Board will be followed that are not palpably in error; therefore, 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 Employees involved in this dispute are respectively Carrier and Employees 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 29th day of September 1965.

#### **LABOR MEMBER'S DISSENT TO AWARD 13859, DOCKET CL-14229**

Award 13859, Docket CL-14229, is wrong in that "tests" totally inapplicable were invoked by the Referee notwithstanding the fact that the alleged necessity for such "tests" was not even apparent in this case.

The first paragraph of the Opinion clearly reflects the facts of this case and, on the basis of prior Awards, including 180 and 4977, the claim should have been sustained.

Referees should devote some of their energies toward devising proper remedies in such cases rather than building upon what are already almost impossible "tests" in order to deny such claims and thereby condone and encourage further disregard for the Agreements entered into in the railroad industry.

The Referee assumed that the parties included "gatemen" in their Scope Rule for no apparent reason, and concludes that since it was included without specification of any reason, and thus without significance, that the work thereof could be removed from employees covered by the Agreement and given over to others.