Award No. 13963
Docket No. TE-12916

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Benjamin H. Wolf, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION (Formerly The Order of Railroad Telegraphers)

ILLINOIS CENTRAL RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Illinois Central Railroad, that:

1. The Carrier violates the terms of an Agreement between the parties hereto when commencing August 10, 1960, it assigned the work of handling communications at Bloomington, Indiana to a Rule B-1 Agent-Yardmaster after the assigned hours of the Operator at this station.

2. The Carrier shall, because of the violation set forth in Part 1 of this Statement of Claim, commencing August 10, 1960, and each date thereafter so long as the violation continues, compensate V. S. Sailor, the regular occupant of the Operator's position, Bloomington, Indiana, and/or his successor, in accordance with the call or overtime provisions of the Agreement.

EMPLOYES' STATEMENT OF FACTS: There is in evidence an agreement by and between the parties to this dispute, effective June 1, 1951, revised December 1, 1956, and as otherwise amended.

At page 116 of said agreement (Wage Appendix) is listed a position at Bloomington, Indiana, on the effective date thereof, a position fully covered by all of the rules of the agreement. The listing for your ready reference reads:

"INDIANAPOLIS DISTRICT

LOCATION	POSITION	RATE OF PAY
Bloomington	Operator	$2.31"

At page 7 of said agreement, under paragraph B, sub-paragraph 1 of the Scope Rule, are listed 19 agency positions, the occupants of which are ex-

here, just as in the above case, is the highest rated employe in the office involved, and here too, just as above, his position is covered by the Telegraphers' Scope Rule and his duties are not restricted so long as the work he performs is covered by the agreement.

The Carrier submits that it did nothing more than rearrange its work to meet service requirements, which this Board has consistently recognized it has the right to do unless restricted by the terms of the agreement. The agreement, as we have shown, does not prohibit what was done here, and the Employes, we reiterate, have cited no rule or presented any argument to show otherwise.

There has been no violation of the agreement and the claim should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: The work coming within the scope of the ORT agreement at Carrier's facilities at Bloomington, Illinois, was performed by Claimant, an hourly rated operator, and by the agent-yardmaster, a monthly rated employe. The latter was one of the agents to whom Rule 1 B(1) of the agreement applied. It states:

> "B. 1. Only Rules 1, 21 A, C, and D, 23, 29, and 36 shall be applicable to agents at the following stations:
>
> Bloomington, Ind.
>
> . . . . ."

On August 10, 1960 the Carrier changed the operator's working hours of 8:00 A. M. to 5:00 P. M., advancing them to 6:30 A. M. to 3:30 P. M. The change necessitated the re-assignment of approximately 15 minutes of work formerly done by the operator to the agent-yardmaster. The Employes object to the performance of this work by the agent-yardmaster.

The issue presented is whether or not a B-1 agent may perform routine telegraph work or, more accurately, whether or not the operator has the contract right to this work in exclusion of the agent.

The question of who may perform certain kinds of work rests basically in the prerogatives of management. Absent a statutory or contract prohibition, Carrier may assign work to any employe it chooses. Award 12419 — Coburn. Whenever an Organization has sought a contractual limitation to this right, it has usually pointed to the Scope Rule which it argued either explicitly or implicitly restricted that right. The Scope Rule is, thus, a rule which primarily places limitations upon the Employer's prerogatives and, in doing so, may establish exclusive rights in the employes. We say "may" because not all Scope Rules establish exclusive rights. Where the Scope Rules are general in nature we have frequently held that exclusive rights are not established unless custom and history support that inference. Where, however, the language of the Scope Rule clearly spells out an intention to grant exclusive rights, we have supported those rights upon the language itself.

We find it necessary to restate these elementary principles in order to deal with the Organization's arguments in this case. It urges that B-1 agents

were not intended to have the right to do routine communications work because they were included in the agreement only for a limited purpose. In support, the Organization points out that only 5 rules apply to these agents and to the fact that in over 10 years none of the B-1 agents has ever done or been asked to do any routine communications work. Such a history of custom and usage, it said, should decide the ambiguity of the B-1 agent's position in favor of the Organization.

We think the argument is not persuasive. The B-1 agents are included in the Scope of the Agreement. They are named in the Scope Rule and Rule 1 B(1) specifically states that Rule 1 Scope shall apply to them. It is difficult to see how the unlimited prerogative of the Employer to assign work to whomever it chooses can be said to be limited by the inclusion rather than the exclusion of this category of employe within the Scope of the Agreement.

No ambiguity is thereby created which needs a resort to history to determine. But even if we were to look to history, the negative inference, that the parties did not intend to give the B-1 agents any right to do routine work, is not the only inference to be drawn. One can draw another inference, that although the right was granted there never was an occasion to exercise the right.

Thus, neither the language of the Scope Rule nor the resort to history supports the Claimant. More can be said. Claimant must not only show that the Carrier's right to assign this work to B-1 agents was restricted, but it must show an exclusive right in the Claimant to this work. The Scope Rule does not support such exclusiveity. Rule 4, however, does grant exclusive rights. It says:

> "No employe other than covered by this schedule and train dispatchers will be permitted to handle train orders" . . .

It should be noted that Rule 4 applies to employes covered by this agreement which includes the B-1 agents. Thus, the only clear grant of exclusive rights to work expressly includes the employes, whom the Organization would exclude.

The remaining argument of the Claimant is that the limited application of the agreement to these agents shows an intention to apply the agreement to them only for the purpose of assuring that these positions would be filled with experienced men and for not other purpose. The answer to this argument is that if such were the intention it would have been simple to have said so.

In the interpretation of Award 3563 (Serial No. 70) we held that where a position was exempted from specified rules it is the occupant of the position not the work that is excepted from the rules. It would follow that all the work within the Scope of the Agreement could be performed by any employe subject to the agreement even though he is excepted from the application of specified rules.

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 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 19th day of November 1965.