

Award No. 14064

Docket No. CL-15138

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

Murray M. Rohman, Referee

**PARTIES TO DISPUTE:**

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

**CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC  
RAILROAD COMPANY**

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood (GL 5637) that:

1. Carrier violated the Clerks' Rules Agreement at Sioux City, Iowa, when it assigned clerical work which is recognized as a part of the duties of a regularly assigned clerical position to a Switch Foreman, an employee not covered thereby.
2. Carrier shall now be required to compensate employee B. C. Bell for two (2) hours at the overtime rate of Yard Clerk Position No. 5764 for September 16, 1963.

**EMPLOYEES' STATEMENT OF FACTS:** Employee B. C. Bell is the regularly assigned occupant of Yard Clerk Position No. 5764 at Sioux City, Iowa. His hours of service are from 7:45 P. M. to 4:45 A. M., Monday through Friday, with rest days of Saturday and Sunday.

The duties of Yard Clerk Position No. 5764 are as follows:

"List trains and related yard clerk duties, perform PFI work, janitor work in yard office, weigh cars and service cabooses. Also operate IBM machines, prepare machine cards and tape and transmit to west yard. Tour of duty to commence at east yard and perform messenger service between east and west yard."

(See copy of Bulletin No. 48 of August 30, 1963 submitted as Employees' Exhibit A.)

Yard Clerk Position No. 5764 is a 6-day position as contemplated by Rule 27(c) and is filled on its sixth day by a regularly assigned relief employee.

On Monday, September 16, 1963, when there was no yard clerk on duty General Yardmaster H. W. Preston assigned the clerical work of checking and

other Divisions of the National Railroad Adjustment Board can be cited in support of this well established principle. \* \* \*

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"\* \* \* If the facts clearly and conclusively support the Organization's contention, then we must allow the claim; if they lack specificity and are inconclusive, we must deny it. \* \* \* After a review of the entire record, we find that the evidence submitted by the Organization in behalf of the claim is not of sufficient substance to sustain the burden of proof required to justify an affirmative award."

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"\* \* \* The Petitioner has submitted no factual data in support of its claim that employes other than yardmasters are performing yardmasters' duties in violation of the controlling Agreement. This Division has repeatedly held that the burden is on the claimant to show by competent and substantial evidence that duties belonging to yardmasters are being performed by employes outside the scope of the Agreement. The Petitioner has failed to sustain this burden and the claim will be denied."

It is the Carrier's position that the employes have failed to meet the burden of proof feature in the instant case in view of which the instant claim must be dismissed in its entirety.

The Carrier submits that it is readily apparent that by the claim which they have presented the employes are attempting to secure through the medium of a Board Award in the instant case something which they do not have under the rules and in this regard we would point out that it has been conclusively held that your Board is not empowered to write new rules or to write new provisions into existing rules.

It is the Carrier's position that there is absolutely no basis for the instant claim as it is in no way supported by past practice, schedule rules or agreements and we respectfully request, therefore, that the claim be denied.

(Exhibits not reproduced.)

**OPINION OF BOARD:** Yard Clerk Position No. 5764 at Sioux City, Iowa, is a 6-day position. The Claimant is the regularly assigned employe of such position, with hours of service from 7:45 P. M. to 4:45 A. M., Monday through Friday, and rest days on Saturday and Sunday.

On Monday, September 16, 1963, when no yard clerk was on duty, the General Yardmaster assigned the work of checking and verifying the train list for Train No. 73, consisting of 16 loads and 86 empties, to the Switch Foreman. The train list was checked against the waybills, prior to actually switching the train, in order to ascertain that the correct information was contained on the list. The work of verifying the car numbers and destination by the switch foreman consumed approximately five minutes.

The Organization, thereafter, filed the instant claim on behalf of the Claimant, contending that the Carrier had violated the effective Agreement existing between the parties. The basis for such claim is grounded on Rule 1—the scope clause. In essence, the argument advanced by the Organization rests on the principle that checking and verifying train lists is clerical in nature. Moreover, such work is generally associated with and required on

yard clerk positions at various locations on the property, including the one at Sioux City.

The Carrier, on the other hand, rejects the Scope Rule as determinative of the issue, inasmuch as said clause does not define or describe work. Rather, it merely lists different classes of employees for whom hours of service and working conditions are governed by the Agreement.

Thus, we are required to analyze the significance of the Scope Rule contained in said agreement; and whether such will suffice to support the Organization's claim.

The Carrier advances two propositions in support of its position that the instant claim should be denied. The first, that the work of "checking and verifying train lists" is neither work exclusively reserved to the Claimant nor exclusively performed by him—or other employees within the scope of the Clerks' Agreement. Rather, it is work performed by various classes of employees, including General Yardmasters, Yardmasters, Switch Foremen and non-bargaining unit employees, both at Sioux City and other locations.

The second, is predicated on the significance of the terms "position" and "work." In the Carrier's view these are words of art and are not synonymous. It emphatically submits that the Scope Rule is concerned solely with "positions." In fact, it alleges that the Organization sought to include, during the course of their negotiations, language which contained the words "position or work." However, the Organization was unsuccessful in this endeavor. Therefore, the term "position" must be accorded its accepted meaning. The language is unambiguous and clearly expresses the intent of the signatory parties.

Although this Board is keenly aware of the problem encountered by the Organization herein, it can do naught but acquiesce with the cogency of the Carrier's lucid averment. The disputed rule involved herein, has previously been presented for consideration to this Board (See Award 12360 and 11755). The above-cited awards involve the same parties and similar arguments were therein advanced. The gist of these decisions espoused two basic principles, namely, for the Organization to prevail it must prove that the duty of "checking and verifying train lists" was exclusively performed by Clerks on Carrier's system—historically, traditionally, usually and customarily. Secondly, that "position" is not synonymous with "work;" and that the Scope Rule involved herein, is general in nature (See Award 12841).

It is, therefore, the considered opinion of this Board in view of the general nature of the Scope Rule, the Organization has failed to meet the burden of proving by a fair preponderance of the evidence, that this type of work has been exclusively performed by the Clerks, either system-wide or at the location in issue.

**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 30th day of December 1965.