

Award No. 14639
Docket No. CL-15383

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

David H. Brown, Referee

PARTIES TO DISPUTE:

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

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

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5711) that:

1. Carrier violated, and continues to violate, the Clerks' Rules Agreement at Sioux City, Iowa, when it permitted an employe not covered by the scope and application of that Agreement to perform work covered thereby.

2. Carrier shall now be required to compensate Employee B. C. Bell, at the pro rata rate of Yard Clerk Position No. 6471 for one (1) hour for March 9 and 10, 1964, and for all subsequent days that this violation continues.

EMPLOYEES' STATEMENT OF FACTS: Employee B. C. Bell is the regularly assigned occupant of Yard Clerk Position No. 6471 at Sioux City, Iowa. His hours of service are from 2 P. M. to 11 P. M., Monday through Friday, with rest days of Saturday and Sunday.

Messenger service between the East and West Yards is one of the principal duties assigned to Yard Clerk Position No. 6471 by bulletin and is a duty assigned to and performed by clerical employes. See Employees' Exhibits A, B, C, D and E attached.

On the dates specified in Item 2 of the Statement of Claim and continuing thereafter, messenger service between the East and West Yards at Sioux City, was and is being performed by West Yard Yardmaster, W. W. Preston, an employe outside the scope and application of the Clerks' Agreement. The procedure is for West Yard Yardmaster Preston, whose assignment is from 12 A. M. to 8 A. M. at the West Yard, to drive his automobile to the East Yard before his tour of duty begins and pick up waybills and other material and bring them to the West Yard. Also, on arrival of Train No. 174, operating between Sioux Falls and Sioux City, and Train No. 73, between Manilla and Sioux City, he takes the waybills from those trains from the West Yard to the East Yard.

Timeslips filed by employe B. C. Bell for March 9 and 10, and all subsequent days on which the violation occurs were declined by Mr. L. H. Walleen, Superintendent, under date of April 24, 1964. Copy of Mr. Walleen's letter of declination is submitted as Employees' Exhibit F.

Appeal from the decision of Superintendent Walleen was taken to Mr. S. W. Amour, Assistant to Vice President, under date of June 3, 1964. Mr. Amour declined the claim in his letter of July 30, 1964.

Discussion of the claim during conference on December 16, 1964 produced no settlement. During this conference Carrier was asked if it would be agreeable to disposing of the claim on the basis of the decision rendered in connection with another claim involving the same question, the same claimant and the same location but on different dates which is covered in Mr. C. L. Dennis' letter to Mr. S. H. Schulty, Executive Secretary of the Third Division, National Railroad Adjustment Board, dated December 7, 1964, file 281-54-NAB-6, advising of intent to submit the dispute to the Third Division. The Carrier, however, was not agreeable to applying the decision in that case to the instant case on the basis that the instant claim is not properly a continuing claim.

Submitted as Employees' Exhibit G is copy of the General Chairman's reply to Mr. Amour's letter of July 30, 1964.

(Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS: That portion of the instant claim " * * * for all subsequent days that this violation continues" is, for reasons that will be fully explained in "Carrier's Position," improper and invalid and, therefore, barred under the provisions of Article V of the Agreement of August 21, 1954.

Claimant B. C. Bell is the regularly assigned occupant of Yard Clerk Position No. 6471 at Sioux City, Iowa which is assigned from 2:00 P. M. to 11:00 P. M., Monday through Friday with Saturday and Sunday rest days.

The instant claim involves the work of "Messenger service between East and West Yards" at Sioux City, Iowa which, by the claim which they have presented, the employes are contending is work exclusive to Yard Clerk Position No. 6471, but which, in fact, is not work exclusive to Yard Clerk Position No. 6471 or any other position within the scope and application of the Clerks' Agreement as the Carrier will establish in its "Position."

There is attached hereto as Carrier's Exhibit A copy of letter written by Mr. S. W. Amour, Assistant to Vice President, to Mr. H. V. Gilligan, General Chairman, under date of July 30, 1964 and as Carrier's Exhibit B copy of letter written by Mr. Amour to Mr. Gilligan under date of September 15, 1964.

(Exhibits not reproduced.)

OPINION OF BOARD: The facts, issues, agreement and parties are the same as in Award 14065. Since we cannot say such award was palpably in error, we must deny this 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 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 June 1966.