

Award No. 14650
Docket No. CL-15415

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 EMPLOYEES**

MISSOURI PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5719) that:

1. The Carrier violated and continues to violate the Clerks' Agreement when, beginning September 11, 1963, it failed to assign to employees within the scope of said Agreement the work of handling mail and baggage at Harlingen, Texas.

2. C. Juarez be paid for 2 hours each day Saturday through Wednesday, and L. V. Martinez for 2 hours each Thursday and Friday, beginning November 29, 1964, and to continue each day thereafter until such time as the work of handling mail and baggage at Harlingen, Texas, is returned to employees under the Clerks' Agreement.

EMPLOYEES' STATEMENT OF FACTS: For many years prior to July 24, 1961, the Carrier maintained among others, the following positions at its Passenger Station at Harlingen:

Job No.	Title of Position	Assigned Hours
1530	Passenger Porter	6 A. M. to 3 P. M.
1529	Messenger-Caller	5 A. M. to 2 P. M.
1531	Passenger Porter	3 P. M. to 11 P. M.
1528	Janitor-Caller	3 P. M. to 11 P. M.

Effective with termination of assignment on July 24, 1961, the positions of Passenger Porters Nos. 1530 and 1531 were abolished and the remaining duties, including handling of mail and baggage, were assigned to Messenger-Caller No. 1529 and Janitor-Caller No. 1528. (Employees' Exhibits Nos. 1 and 2.)

Due to the volume of mail and baggage being handled on the 3 P. M. to 11 P. M. assignment, Messenger-Caller No. 1529 was given a call each day to assist Janitor-Caller No. 1528.

OPINION OF BOARD: Here we have a general Scope Rule which has been amended as follows:

"(a) It is recognized and agreed that all of the work referred to in Rule 1 of the Agreement dated November 1, 1940, between the Carrier and the Brotherhood belongs to and will be assigned to employees holding seniority rights and working under the Clerks' Agreement. . . ."

Further, Claimants rely on Section (b) of Rule 1 which reads:

"Positions referred to in this agreement belong to the employees covered thereby and no position shall be removed from this agreement except by agreement."

The burden of Claimants' contention is that the foregoing sections, when taken with the body of Rule 1 listing classes of employees, reserves to them the exclusive right to load and unload mail and baggage on Train No. 54 at Harlingen, Texas.

An examination of the Scope Rule reveals no reference to the handling of mail. Under classes of employees listed under "Group 2" we do find reference to "baggage and parcel room employees."

In the instant case the baggage and parcel room employee (a member of the complaining organization) is assisted in handling Train No. 54 by the Brakeman accompanying the train.

Let us first consider the effect of Section (b) of Rule 1 which is quoted *supra*. The reference there is to "Positions referred to in this agreement." This is conjunctive with numerous positions listed on pages 11 through 19 of the Agreement. However, the position of Passenger Porter 1530 (the abolished position of which the disputed work is residual, all the rest having been absorbed in positions occupied by members of the Organization) is not one of the listed positions. The quoted section of the rule protects only the listed positions. Plainly, it says "positions referred to in this agreement" and not, positions now existing or hereafter bulletined by Carrier."

We next direct our attention to the amendment effected by the Memorandum of Agreement found on page 55 et seq of the Agreement — the section first quoted in this opinion. The substance of this provision is that "all of the work referred to in Rule 1. . . . belongs to and will be assigned to employees holding seniority rights and working under the Clerks' Agreement. . . ."

What work referred to in Rule 1? Claimants' case here must rest on this language found in listings under "Group 2" of Rule 1 (a): "baggage and parcel room employees . . . and all other employees performing similar work."

We must recognize that there are numerous instances in the industry where certain work is handled by more than one craft. Apart from specific agreement Clerks do not have an exclusive right to handle mail and baggage. Awards 11643, 11755 and 14050, for example.

And here, Claimants make no contention that the handling of mail and baggage on Carrier's line has heretofore been done exclusively by them. They

contend only that their employees at the Harlingen station have done all of the loading and unloading of mail and baggage on Train No. 54. This is not disputed by Carrier.

What is the meaning of the reservation of work amendment involved here? Carrier contends that Claimants cannot prevail unless they show a system-wide practice, supported by history and tradition, of exclusive performance of the contested work.

If Carrier is correct in this contention, then the reservation of work amendment is utterly meaningless. Claimants' position would be equally as good without the amendment.

We do not believe the amendment was negotiated between the parties without the intention that it would strengthen the claims of the Clerks to certain work. But if the strengthening is limited only to that work specifically protected by other sections of the agreement then the amendment is superfluous. And if the strengthening is meant only for that work which has by history, tradition and practice been reserved exclusively to the Clerks, then likewise the amendment is meaningless.

We must conclude that the amendment has some cogency — that it was intended to enlarge the Clerks' claim to the work to which it refers — "all of the work referred to in Rule 1." Here we are met with Carrier's classic argument: Rule 1 does not define work; it simply lists positions. If this argument is sound en toto we have again gone up a dead end street in our efforts to give some meaning to the reservation of work amendment. We refuse to believe that Carrier agreed to the amendment without good faith. The amendment refers to "work" in Rule 1, not to positions. This clearly indicates the parties intended that Rule 1 connotes more than positions. In entering into the agreement for reservation of "work" the parties have removed any ambiguity as to what is meant by Rule 1. See Award 2253.

We conclude that the work referred to in Rule 1, insofar as we are here concerned, is that work heretofore assigned by Carrier to a given craft at a given position, i.e., to a "baggage and parcel room employee." Since employees of such classification, members of Claimant Organization, have previously handled exclusively the loading and unloading of mail and baggage on Train No. 54, the work can be removed from them only by negotiation. The work of "baggage and parcel room employees" at Harlingen included this task. At other stations the situation may well be different.

We find no merit in Carrier's contention that the claim is barred under Rule 29 (b) 1 of the Agreement. The claim adequately sets forth a continuing violation, particularly when taken in connection with Carrier's admissions on the property. However, the claim will commence as of the date of November 20, 1963, the date alleged in Mr. Ketcham's letter of December 2 to Mr. McKeithan. The claim will be allowed only for such succeeding days on which the agreement was similarly violated.

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 violated.

AWARD

Claim sustained in conformity with opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 15th day of July 1966.