

Award No. 15458
Docket No. CL-16008

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Thomas J. Kenan, 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-5911) that:

1. Carrier violated the Clerks' Agreement at Aberdeen, South Dakota, when on February 22, 1965 (a holiday) it required or permitted employees not covered by that Agreement to perform work covered thereby.

2. Carrier shall compensate employee W. J. Labesky for a call of five hours 20 minutes (5'20") at the time and one-half rate of Yard Clerk Position No. 7351 for February 22, 1965.

EMPLOYEES' STATEMENT OF FACTS: Employee W. J. Labesky is the regularly assigned occupant of Yard Clerk Position No. 7351. Position No. 7351 is assigned from 3:59 P.M. to 11:59 P.M. Wednesday through Sunday, with Monday and Tuesday rest days.

The Monday and Tuesday rest days are included in a rest day relief assignment occupied by employee C. B. Nelson.

On Monday, February 22, 1965, which was both a holiday and one of Claimant Labesky's assigned rest days, employee John Kraft, who is regularly assigned to Yard Clerk Position No. 7352 from 11:59 P.M. to 7:59 A.M. Friday through Tuesday, with Wednesday and Thursday rest days, was absent account of illness, and claimant Labesky was called to fill that assignment.

Prior to starting time of Yard Clerk Position No. 7352 and while Yard Clerk C. B. Nelson, who was relieving on employee Labesky's regular Position No. 7351 from 3:59 P.M. to 11:59 P.M., was absent from the yard office bleeding and chalking cars for Train 263 C 21, Assistant Trainmaster E. J. Lyman ordered and called the train crew for Train 263 C 21 for 12:30 A.M. and Yardmaster Wertz lined up the bills for same.

OPINION OF BOARD: The Employees contend that the ordering, calling of the crew and lining up the bills for Train 263 at Aberdeen, South Dakota, on February 22, 1965 by either the trainmaster or the yardmaster violated the rules of the Clerks' Agreement.

To sustain this contention, the Employees must initially establish that "the ordering, calling of the crew and lining up bills" is work exclusively performed by yard clerks. This burden of proof falls upon the Employees since Rule 1 of the Clerks' Agreement, the Scope Rule, is general in nature and necessitates a showing that through tradition, custom, or past practice the work in question has been exclusively performed by the position in question. See Awards 14327, 14075, 11864, 11756, 11621.

The Employees have failed to meet this burden of proof. The evidence actually tends to establish that the disputed work is of a type customarily, traditionally, and by past practice performed at Aberdeen, South Dakota, by the yardmaster when the yard clerk is absent from the office in the performance of other duties, which is the case here. For failure of the Employees to meet their burden of proving the yard clerks' exclusive performance of the disputed work, the claim must be rejected.

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 has not been violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 31st day of March 1967.