

Award No. 15857
Docket No. CL-16301

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John J. McGovern, Referee

PARTIES TO DISPUTE:

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

THE KANSAS CITY SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6001) that:

1. Carrier violated the Clerks' Agreement when it assigned messenger service between Harriet Street and Deramus Yard, Shreveport, Louisiana to contract messenger.

2. Carrier shall now be required to allow Relief Clerk N. Heable, Jr., eight (8) hours at penalty rate each date, May 8, 9 and 22, 1964.

EMPLOYEES' STATEMENT OF FACTS: In the year 1956, the Terminal and Yard facilities of the Kansas City Southern Railway Company and the Louisiana & Arkansas Railway Company were combined and established at a new facility, Deramus Yards, located several miles in a westerly direction, from the previously established facility of either Carrier, at Shreveport, Louisiana. This was a coordination of Yard facilities and covered by a memorandum of agreement dated November 22, 1955, under applicable provisions of the Washington Job Protection Agreement. In the agreement, among other positions, there was established three (3) Caller-Messenger positions, who with their regularly assigned relief, worked 7:00 A.M. to 3:00 P.M.; 3:00 P.M. to 11:00 P.M.; and 11:00 P.M. to 7:00 A.M. in continuous "around the clock" service. These positions were established as Group 2 positions as provided in Rule 1 of the current Agreement.

The duties of these Caller-Messenger positions consisted of: Calling crews, carrying messages, driving station wagon, and other Class 2 duties as might be assigned. Included in these duties was the exclusive performance of carrying waybills, messages, time slips, switch lists, IBM cards, etc., to and from Deramus Yards and Harriet Avenue (the former Yard facility of the Kansas City Southern).

After several years, the 11:00 P.M. to 7:00 A.M. Caller-Messenger position was abolished, and when it was necessary to carry waybills, messages, IBM cards, etc., from or to Deramus Yard and Harrier Avenue dur-

After the move was made to Deramus Yard, the only clerical force remaining at Harriet Street was a yard clerk position on the 3:00 P. M. and 11:00 P. M. shifts to handle interchange, in view of which the Harriet Street Yard Office stop for contract messenger was eliminated by reason of the decreased force. On or about May 1, 1964, due to the installation of IBM equipment, the Harriet Street stop was resumed by the contract messenger.

There is no dispute between the parties in regard to the contract messenger picking up and delivering mail, messages, waybills, reports, etc., at the Yard Office, General Office, Freight Office, Traffic Department Office, Union Station, or any other location at Shreveport, with the exception of Harriet Street, where daily claims for eight hours at penalty rate have been filed beginning May 1, 1964.

OPINION OF BOARD: The Terminal and Yard facilities of two railroads, hereinafter referred to as the Carrier, were combined and established at a new facility, Deramus Yards, Shreveport, Louisiana. This consolidation of Yard facilities was covered by a Memorandum of Agreement dated November 22, 1955. Provisions were made in this agreement for the establishment of three Caller-Messenger positions, the duties of which consisted of carrying messages, calling crews, etc., on an "around the clock" service basis. The positions were established as Group 2 positions in accordance with Rule 1 (Scope Rule) of the current agreement. Subsequently, the three positions in question were abolished by the Carrier, and, effective April 30, 1964, the involved work was transferred to an outside Contract Messenger.

The Organization contends that with the establishment of the new Deramus Yard facility, the messenger work was "assigned to and performed exclusively by employees under the Clerks' Agreement." Carrier, on the other hand, avers that the work has never been assigned to any clerical position and, furthermore, has not been performed exclusively by employees under the Clerks' Agreement; that from 1926 to 1956, the Contract Messenger made regular trips to the Harriet Street Yard for the purpose of delivering and picking up waybills, mail, messages, etc. Carrier further states that when the facilities were consolidated at Deramus Yard, the Contract Messenger service was discontinued at Harriet Street, but continued at numerous other locations; that from the date of the consolidation in 1956 to 1964, the messenger service was performed by "various employees, including supervisors, patrolmen, telegraphers and clerks." The Carrier also states categorically several times throughout the record that Contract Messengers have been performing the work since 1926, and this statement has not been controverted by the Organization.

We are aware of the many awards of this Board wherein it has been held that when a Scope Rule is general in nature, such as the one in the instant case, the employees have the burden of showing an exclusive right to the work by looking to tradition, custom and practice. We are also aware of the many awards holding that in order to invoke the exclusivity doctrine, employees must demonstrate by competent evidence that such work has been reserved to them exclusively under a system-wide practice. We have been urged by the Carrier to deny this claim on the basis of the foregoing principles.

The Organization presents the argument that the Memorandum of Agreement dated November 25, 1955, is a special agreement, and as such, "super-

sedes not only the regular agreement rules, but all practices based on custom or tradition, regardless of the length of their historical establishment." They further urge upon us the proposition that even if parties not covered by the Clerks' Agreement performed messenger service at other locations on the Carrier's system, this would not be controlling because it is their contention that the special agreement is an exception to the general rule or practice. Further, they have presented us with awards wherein it was held that the exclusivity doctrine is inapplicable to a situation such as we have in this case when the work has not been given to other crafts and classes of its employees but to an outside Contractor.

We have considered the arguments of both sides very carefully, and conclude that it is neither necessary, nor, indeed, on the basis of the evidence confronting us, that it is possible for us to invoke any principles urged upon us by either side. We find after analysis that the evidence in this case is so conflicting that it defies resolution of the issue presented based on the merits. Since the burden of proof rests with the petitioning party, in recognition of this conflict, we will deny the claim for lack of sufficient probative evidence.

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 13th day of October 1967.