

Award No. 16356

Docket No. CL-16743

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**(Supplemental)**

Arnold Zack, Referee

**PARTIES TO DISPUTE:**

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

**ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY**

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood (GL-6201) that:

(1) The Carrier violated the terms of the currently effective agreement between the parties when beginning on December 8, 1965, employees of other crafts were assigned work of handling mail and baggage and sorting and making delivery of United States Mail to mail trucks at Fort Scott, Kansas, in violation of the Scope Rule of the Clerks' Agreement.

(2) L. B. Coiner now be allowed a two hour call at the time and one-half rate of Clerk-Caller position on each date, December 11, 13, 14, 17, 18, 19, 20, 21, 25, 26, 27, 31, 1965; a total of twelve (12) days.

(3) J. D. Johnson now be allowed a two hour call at the time and one-half rate of the Clerk-Caller position on each date December 8, 13, 14, 15, 20, 21, 22, 27, 28, 1965; January 3, 4, 5, 11, 24, 25, 26, 1966; February 1, 2, 7, 8, 9, 14, 15, 16, 21 and 22, 1966; a total of twenty-six (26) days.

(4) H. R. Lyell now be allowed a two hour call at the time and one-half rate of Clerk-Caller position on each date December 9, 16, 23, 24, 28, 30, 1965; January 6, 13, 19, 20, 27, 31, 1966; February 1, 2, 3, 10, 17 and 24, 1966; a total of eighteen (18) days.

(5) Fred Jackson now be allowed a two hour call at the time and one-half rate of Clerk-Caller position on each date December 11, 12, 15, 16, 17, 22, 23, 24, 25, 26, 29, 30, 31, 1965; January 1, 2, 7, 8, 9, 12, 13, 14, 15, 16, 22, 23 and 27, 1966; a total of twenty-six (26) days.

The station force at Fort Scott during the claim period was as follows:

Position	Hours	Work-Week**	Day
Chief Clerk Cashier	8AM- 5PM*	Mon-Fri	5
Chief Yard Clerk	7AM- 3PM	Mon-Fri	7
Caller	3PM-11PM	Wed-Sun	7
Caller	11PM- 7AM	Fri-Tues	7
Manager-Wire Chief	7AM- 3PM	Mon-Fri	7
Night Wire Chief	3PM-11PM	Wed-Sun	7
Late Night Wire Chief	11PM- 7AM	Fri-Tues	7

\* Excluding lunch period.

\*\* Relief furnished on seven-day positions.

The handling of mail and baggage at Fort Scott was causing delay to the Carrier's first-class passenger trains, and the U. S. Post Office Department was complaining about (1) the delay of U. S. Mail moving to and from such passenger trains at Fort Scott, and (2) the delay in sorting and making delivery thereof to U. S. Mail trucks at that point. See Carrier's Exhibit A, attached hereto.

In order to stop such delay, the Carrier instructed the telegraphers and train porters to assist in the handling of the mail and baggage. See Carrier's Exhibit A-1, attached hereto.

The Organization takes the position that the use of telegraphers and train porters to assist clerks in the handling of mail and baggage violates the terms of the current Clerks' Agreement.

(Exhibits not reproduced.)

**OPINION OF BOARD:** On December 2, 1965, the Carrier assigned telegraphers and train porters to assist in the handling of mail and baggage to and from Passenger Trains Nos. 101-102 and in the sorting and delivery of U. S. Mail to the U. S. mail truck at Fort Scott, Kansas. Employees covered by the Clerks' Agreement at Fort Scott had exclusively performed this work for as long as there has been any record, giving rise to the instant claim.

The Organization contends that the claimants have an exclusive right to this work, and have been the only ones to perform it at Fort Scott. It points out that the system-wide-exclusivity doctrine must bear in mind the custom, practice and tradition at the particular point under consideration, which, when as clear as here, would require sustaining the claim.

The Carrier acknowledges that exclusivity has been shown regarding the work in dispute at this location, but argues that the well established principle of this Board has been to require a system wide showing of exclusivity, which has not been the practice in work of this type.

This Board has in many cases considered the question of whether exclusivity should be applied on system wide or an individual location basis. We have examined the several awards cited to support the latter view, but find them unconvincing in the light of the majority of awards by this Board embracing the concept of system wide exclusivity.

Referee Dorsey in Award 15695, between these same parties, stated:

"The Scope Rule in the Clerks' Agreement is general in nature. Therefore, to prevail, Petitioner has the burden of proof that the work claimed has been traditionally and customarily performed on a system-wide basis by employees covered by its Agreement. See Award Nos. 14944 and 15394, involving the same parties and Agreement."

We see no reason to overturn that reasoning. Inasmuch as the Organization has been unable to demonstrate system wide exclusivity in the handling of U. S. Mail, the claim must be denied.

**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 28th day of May 1968.

#### **LABOR MEMBER'S DISSENT TO AWARD 16356, DOCKET CL-16743**

In various Awards this Board has held that recognition of a practice at the particular location rather than the practice elsewhere should govern and has required such evidence. Clearly, such recognition is in line with the time honored principle that the "specific" controls over the "general."

In various other Awards, such as 15011, this Board has adopted the sound logic that where two interpretations are possible, the one which would lead to an absurd result should not be chosen.

Award 16356, Docket CL-16743, results in an Award in exact opposition to the sound and logical principles noted above, and when viewed in light of the many variables, the Board made exceptions, etc., represents invocation of an impossible test to deny employees of their right to work which they have earned under their Agreement. I therefore dissent.

**D. E. Watkins**  
Labor Member  
6-26-68

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