



Award No. 16497

Docket No. CL-16656

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Nathan Engelstein, Referee

PARTIES TO DISPUTE:

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

ILLINOIS CENTRAL HOSPITAL ASSOCIATION

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6062) that:

(1) The Illinois Central Hospital Department violated, and continues to violate, the rules of the Agreement between the parties, when on November 7, 1964, and subsequent Saturdays, it assigned work performed Monday through Friday on a regular assignment, to employees not covered by the Clerks' Agreement.

(2) Clerk M. Gill, be compensated at the rate of time and one-half, on her regular position of Clerk, "Out-Patient Department," for November 7, 1964, and each subsequent Saturday.

EMPLOYEES' STATEMENT OF FACTS: Prior to the claim date, Clerk M. Gill held the regular assigned position of "Out-Patient Clerk," subject to all rules of the agreement, with a work-week of Monday through Friday. On Saturday, November 7, 1964, Clerk Gill's regular rest day, an employee of the Hospital, not covered by the Clerks' Agreement, namely, a Registered Nurse, was used to perform the clerical duties usually performed by Clerk Gill during her regular work week.

Claim was filed with Miss Pearl Baker, Superintendent, Illinois Central Hospital Department on November 16, 1964. See Employees' Exhibit No. 1-A. On January 4, 1965, Miss Baker was traced for an answer to the original claim. See Employees' Exhibit No. 1-B. On February 8, 1965, Miss Baker was again traced for an answer and was informed by the Local Chairman that the case was being turned over to the Employees' General Chairman for his handling. See Employees' Exhibit No. 1-C. On March 8, 1965, Miss Baker was traced by Employees' General Chairman for answer on the original claim. See Employees' Exhibit No. 1-D. On April 7, Miss Baker responded with an answer to the original claim. See Employees' Exhibit No. 1-E. April 12, 1965, claim was appealed to Administrator J. F. Vanerio. See Employees' Exhibit No. 2-A and 2-B. Mr. Vanerio is the highest officer designated by the Illinois Central Hospital Department to handle claims and grievances. On September 8, 1965, the claim was denied by Administrator Vanerio, as evidenced by Employees' Exhibit No. 2-C.

parties or by the practice on the property both before and after the effective date of the agreement. The hospital will show further that a rule, such as the one upon which the present claim is based, is not to be construed as granting such exclusive rights. This proof will lead to the necessary conclusion that the action of the hospital in allowing the nurse to perform the disputed work was not in violation of the Clerks' Agreement.

(Exhibits not reproduced.)

OPINION OF BOARD: Claim is made that on Saturday, November 7, 1964, Carrier permitted a nurse not covered by the Clerks' Agreement to perform the clerical duties usually performed by Clerk M. Gill, during her regular work week in the Out-Patient Department at the Illinois Central Hospital.

It is the contention of Claimant Gill that since she performed the duties of handling records of out-patients on Monday through Friday, and since this work comes under the Scope Rule 1(a), of the Clerks' Agreement Carrier violated the Agreement when it allowed a nurse on Saturday to perform these duties. Mrs. Gill also maintains that as the regular employe she was entitled to the work under Rule 30(f) inasmuch as this rule provides that where work is required by the Hospital Department to be performed on the day which is not of any assignment it may be performed by an extra or unassigned employe who does not have forty (40) hours of work that week and in all other cases by the regular employe.

In its denial Carrier urges that the Scope Rule is of the general type which does not reserve the duties in question exclusively to Clerks. The fact that these duties were assigned to Clerk Gill it argues is no indication that the duties belong only to Clerks. Carrier points out that on other shifts and during periods when Claimant was away from her desk, this work was performed by a nurse. Furthermore it states that nurses have always handled records in the hospital and Clerks are assigned these duties only when there is enough work to justify relieving the nurses.

Although Mrs. Gill is an employe covered by the Clerks' Agreement and performs the claimed clerical work on Monday through Friday, it does not follow that this work automatically is reserved exclusively to the clerical craft. The Scope Rule lists positions but does not describe the work. In such cases, the exclusive right to this work must be established by custom, practice, or tradition. The record shows that before 1955 nurses performed the duties of registering out-patients and delivering the patients medical record to a doctor. To relieve the nurses of non-professional duties, a receptionist position was created. However, the duties did not become exclusive to the receptionist for nurses on occasions continued to perform the work. When Mrs. Gill is away from her desk, a nurse performed the task of registering the patients and handling medical records. These duties were also performed by a nurse at other times on other shifts. We therefore, do not find support for the position that the disputed work is reserved exclusively to Clerks. For these reasons we find that the Agreement was not violated and the claim is 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 24th day of July 1968.