

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur W. Devine, Referee

PARTIES TO DISPUTE:

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

ERIE-LACKAWANNA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6316) that:

1. Carrier violated the rules of the Clerks' Agreement at Olean, New York, when on September 27, 1963, it abolished position of Ticket Clerk, hours of assignment, 4:30 A.M. to 1:30 P.M. and assigned the work to the Agent, an employe not covered by the scope of the Clerks' Agreement or any other Agreement.

2. Carrier shall now compensate:

(a) D. A. Childs, the difference between amounts earned by him as a checker and what he would have earned had his position of Ticket Clerk not been abolished, retroactive to September 27, 1963 and continuing thereafter until the rule violation is corrected.

(b) C. A. Parker, Jr., the difference between amount he would have earned as Relief Ticket Clerk at Olean, New York since the date of his displacement on or about September 27, 1963 and the various positions he has occupied or will occupy and continuing thereafter, until the rule violation is corrected.

(c) Joseph A. Ducey, who was displaced and reduced to the status of an extra employe as a result of Carrier's action, for any difference between his earnings and what he would have earned and for all days lost since his displacement on or about September 27, 1963 and continuing thereafter until the rule violation is corrected.

(d) D. P. Bradford, C. F. Spencer and Frank Wogick for any loss of wages due to displacements caused by Carrier's action, retroactive to September 27, 1963 and continuing thereafter until the violation is corrected. (Claim 1583.)

Joint check was made on November 9, 1966 as agreed and copy is attached hereto as Employees' Exhibit O. On January 23, 1967, General Manager-Labor Relations Carroll wrote the General Chairman denying the claim. (Employees' Exhibit P) to which the General Chairman replied on February 20, 1967 (Employees' Exhibit Q). Mr. Carroll again wrote the General Chairman on March 21, 1967 (Employees' Exhibit R) to which the General Chairman made further reply on May 31, 1967. (Employees' Exhibit S.)

(Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS: Due to decline in business and decrease in duties and responsibilities in the ticket office at Olean, New York, the position of Ticket Clerk, 4:30 A. M. to 1:30 P. M. was abolished effective September 27, 1963 and the nominal amount of clerical work remaining was absorbed by the Chief Clerk (8:00 A. M. to 5:00 P. M. D. S. T.) and second trick (4:30 P. M. to 1:30 A. M.) Ticket Clerk.

Under date of November 16, 1963 (Exhibit A), claim was instituted by the Local Chairman of the petitioning Organization alleging that certain unidentified work exclusive to clerks and previously performed by the abolished position was allegedly assigned to and performed by the supervisory agent. Claim was denied on January 3, 1964 (Exhibit B) and thereafter handled on appeal in the proper manner to the Division Superintendent and Carrier's highest officer, who following conference on April 7, 1966 confirmed denial on May 25, 1966. (Copies of exchange of correspondence are attached as Carrier's Exhibits C through G). On May 27, 1966 the Organization requested a joint check of records to which Carrier agreed on July 26, 1966. Under date of September 6, 1966, the Organization was advised that Assistant Superintendent L. H. Carter would represent Carrier in such check on September 19, 1966. Because of the unavailability of the Organization representative, the check was not made until November 9, 1966, copy of which is attached as Exhibit H. This check disproved the Employees' assertions and denial decision was confirmed on January 23, 1967 (Exhibit I). Subsequent charges and allegations of the Organization and Carrier's reply thereto attached as Exhibits J and K respectively. Before Carrier had an opportunity to reply to the General Chairman's letter of May 31, 1967 (Exhibit L), Petitioner referred the matter to this tribunal for adjudication.

(Exhibits not reproduced.)

OPINION OF BOARD: This dispute arose when the Carrier abolished the position of Ticket Clerk at Olean, New York, with hours 4:30 A. M. to 1:30 P. M., and assigned the remaining work of the abolished position to other employees.

Employees first contend that the Scope Rule of the Agreement in question is of the specific type and that it exclusively reserves all work of a clerical nature to employees of the Clerks' class and craft. Employees also contend that Rule 12—Reducing Force—was also violated, alleging that some of the remaining work of the abolished position was transferred to the Agent who was not within the coverage of any agreement.

Carrier contends that the Scope Rule of the Agreement is of the general variety and that the remaining work of the abolished position was transferred to the Chief Clerk with hours 8:00 A. M. to 5:00 P. M. and to the Ticket Clerk working from 4:30 P. M. to 1:30 A. M. Carrier further contends that

even if some of the work had been transferred to the Agent that such action would not have constituted a violation of the Scope Rule for the reason that such work would have been incident to and directly attached to the Agent's primary duties and thus would have been permissible under the specific provisions of Paragraph (c) of the Scope Rule which provides for the performance of such incidental work.

We find the Scope Rule of the Agreement to be of the general type in that it does not define or delineate work. We have consistently held that with scope rules of this type it is necessary for petitioners to show an exclusive reservation of the work through custom, practice and tradition. We have further held that such proof must be on a system-wide basis where the agreement is system-wide such as it is here. The record before us contains no evidence whatever of any exclusive reservation of the work through custom, practice and tradition. Neither does it contain any probative evidence of the disposition of the remaining work of the abolished position nor the volume thereof. The record contains many assertions but we have many times held that assertions are not evidence. On the basis of the record before us we find that Petitioner has failed to meet the burden of proving essentials necessary to support his claim. It, therefore, follows that 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 19th day of December 1968.