

Award No. 16934
Docket No. CL-16482

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Bernard E. Perelson, Referee

PARTIES TO DISPUTE:

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

**THE CINCINNATI, NEW ORLEANS AND TEXAS PACIFIC
RAILWAY COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6019) that:

(a) Carrier violated the Agreement at Cincinnati, Ohio, when it required the General Office Mail Room Attendant N. S. Ware, to handle Company and U. S. Mail between Gest Street Station, Terminal Office and Cincinnati Union Terminal, instead of Mr. E. A. Meece, Janitor, with seniority on the CNO&TP Roster, who had previously performed that work.

(b) Mr. Meece shall be compensated for two hours at the proper time and one-half rate, Monday through Friday, beginning November 2, 1964 and continuing, until the work is restored to Mr. Meece and the CNO&TP Seniority Roster.

EMPLOYEES' STATEMENT OF FACTS: This dispute is between the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees as the representative of the Class or Craft of employees in which the claimant in this case holds position and seniority and the Cincinnati, New Orleans and Texas Pacific Railway Company, of the Southern Railway System.

Mr. E. A. Meece is carried on the CNO&TP Seniority Roster, prepared as of July 1, 1965, as a Group 5 employe, Janitor, Cincinnati, Ohio, with a seniority date of February 2, 1933.

Mr. N. S. Ware is carried on the Southern Railway Roster, prepared as of July 1, 1965, as Mail Room Attendant, General Office Building, Cincinnati, Ohio, with a seniority date of April 9, 1943.

Local Chairman, Mr. D. L. Scoggins, filed the initial claim in this case on November 2, 1964, Employees' Exhibit A, and stated:

"It has come to my attention that the mail is being handled by someone other than those on the CNO&TP seniority lists.

specifically changed, alter practices or working conditions established by or under former agreements."

(Supplements not reproduced.)

OPINION OF BOARD: The facts are not in dispute.

Mr. E. A. Meece, on whose behalf this claim is filed, is listed as a janitor on the CNO&TP seniority list of Group 5--Station-Warehouse Laborers, at Cincinnati, Ohio, with a seniority date of February 2, 1933.

Mr. N. S. Ware is listed on the Southern Railway Company seniority list of Group 3 as a Mail Room Attendant, General Office Building, Cincinnati, Ohio, with a seniority date of April 9, 1943.

Both the CNO&TP and Southern Railway Company are a part of a group of railroad companies comprising and known as the Southern Railway System. All the railroad companies that comprise the Southern Railway System are covered by a single agreement between the Southern Railway System and the Brotherhood.

The record, in this dispute, discloses that for many years a messenger made 3 round trips each day carrying mail between the Gest Street Freight Station, and the Vine Street Office and Freight Station and the General Offices. Another messenger carried the mail between the Terminal Office and the Cincinnati Union Terminal. The Vine Street Office and Freight Station were consolidated with the Gest Street Freight Station and by reason of such consolidation one messenger position was abolished. The remaining messenger carried the mail between Gest Street Freight Station, Terminal Office and Cincinnati Union Terminal where the truck driver picked up the mail for the General Office.

Later this position was eliminated and Mr. Meece, in addition to his assigned janitor duties collected the company mail at the yard and freight offices, took it to the Union Terminal mail room or baggage room, picked up incoming mail there and took it back to the yard and freight offices. He made two such trips daily, on foot. Each trip took approximately 45 minutes and was made during his regular hours.

Mr. Ware, who was the only employee listed on the Seniority Roster of Mail Room Attendants, General Office Building, Cincinnati, Ohio, transported and handled mail between the office building, yard office, freight office and Union Terminal baggage room.

After November 2, 1964, Mr. Ware, in the morning, picked up company and U. S. Mail at the freight office, delivered to the Union Terminal baggage room and a Post Office Annex, picked up any incoming mail and took it to the freight office and then proceeded to the General Office Building. In the late afternoon, at about 4:50 P. M., he picked up outbound company mail at the freight office and transported it, along with other outbound mail to the Union Terminal. Mr. Ware used a light auto truck when performing his duties. He went off duty at about 5:45 P. M.

Mr. Meece continued handling and distributing company and U. S. Mail between and in the yard and freight offices. He no longer went to and from the Union Terminal.

It is the position of the Brotherhood that once the work of collecting the company mail at the yard and freight offices and taking the mail to the Union Terminal mail or baggage room and picking up incoming mail there and taking it back to the yard and freight offices was assigned to Mr. Meece, it could not be arbitrarily and unilaterally removed by the Carrier and assigned to employees of another class and/or craft.

The Carrier's position is that the mail in question is being handled by a regular assigned scheduled Carrier employee whose sole assigned, bulletined and preponderating duties are "Driving mail truck and assorting and distributing mail." That the employee, Mr. Ware, has handled mail to and from the Gest Street Freight Station and the Vine Street Freight Station for many years and that the handling of mail to and from the Gest Street Terminal Office is not and never was performed exclusively by Mr. Meece, and such work does not belong exclusively to him but is work also performed by others.

When this dispute was being handled on the property, the Brotherhood claimed a violation of various Rules of the Agreement between the parties. We are concerned with the following Rules of the Agreement:

"RULE 1. SCOPE

(Revised, effective October 1, 1938.)

These rules shall govern the hours of service and working conditions of employees described in the following respective groups in general and district offices, and similar employees in offices and operations under jurisdiction of other officers and subordinate officers in the various departments of each of the Carriers named in the caption of this agreement:

* * * * *

GROUP 3. Other office and station employees, such as office boys, messengers, chore boys, train announcers, gatemen, train and engine crew callers, caller-bus drivers (except exclusive bus drivers), telephone switch-board operators, office building and station watchmen other than those having police authority and operators of certain office or station appliances and devices not requiring special skill or training, all as hereinafter defined in Rule 2.

* * * * *

GROUP 5. Laborers employed in and around offices, stations and warehouses (including baggage and parcel room employees other than those classifying as clerks under these rules), elevator operators, porters, janitors (except charwomen) and matrons, all as hereinafter defined in Rule 2.

* * * * *

It is understood and agreed that the hours of service and working conditions of employes embraced in each respective group above are subject to the specifications and exceptions hereinafter contained in various rules of this schedule. * * *

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"RULE 2.

DEFINITION OF EACH GROUP OF EMPLOYES
AS COVERED BY RESPECTIVE SECTIONS
OF SCOPE RULES

* * * * *

(d) (Effective October 1, 1938.) Other Office and Station Employes — Office boys, messengers, chore boys, train announcers, gate-men, train and engine crew callers, caller-bus drivers (except exclusive bus drivers other than those at Knoxville, Tennessee, covered by supplemental agreement on page 72), telephone switchboard operators, office building and station watchmen other than those having police authority, and operators of certain office or station appliances and devices not requiring special skill or training such as those for duplicating letters and statements, perforating papers, addressing envelopes, numbering Claims and other papers, adjusting dictaphone cylinders and work of like nature; employes gathering mail or other similar work not requiring clerical ability.

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(h) (Effective October 1, 1938.) Office and Station Laborers — Laborers employed in and around offices, stations and warehouses, including freight handlers (baggage and parcel room employes other than those classifying as clerks under these rules), elevator operators, porters, janitors and matrons, performing services of a character which do not require the use of skilled labor."

"RULE 3. EFFECTIVE DATE

(Revised, effective October 1, 1938.)

This agreement becomes effective October 1, 1938, and supersedes and cancels all former agreements but does not, unless rules are specifically changed, alter practices or working conditions established by or under former agreements."

The Agreement between the parties is system-wide.

The Scope Rule is general in its terms. It merely lists classification of employes. Such listing, standing alone, does not establish an exclusive right to the work claimed unless past practice, tradition and custom show that the parties intended the exclusive right to do such work by the employes listed in Group 5.

The burden of proving that the work involved has been customarily and exclusively performed by the employees listed in Group 5, by past practice, tradition and custom, is upon the Brotherhood. Where the Agreement is system-wide, the Brotherhood must also show that the work involved is performed exclusively by the employees listed in Group 5 throughout the Carrier's system.

The mere fact that the Claimant, in this dispute, may have performed and does now perform some of the work involved over a long period of time does not give to him the exclusive right to its performance. Performance alone does not give the Claimant the exclusive right to the work.

In support of its contention Carrier submits evidence that prior to the Claimant having performed some of the work involved, in this dispute, Mr. Ware, an employee in Group 3, did perform the work involved in this dispute. The Brotherhood makes no contention and submits no evidence to show that at all times no one but Group 5 employees performed the work involved at the Cincinnati Terminal of the Carrier.

The Brotherhood has not denied nor challenged the Carrier's statement that the work involved was performed by other employees of the Carrier. Mere allegations are not proof. The work involved was assigned to an employee coming within the scope of the Clerks' Agreement and not to any employee outside of the Agreement. We find no prohibition in the Agreement restricting the Carrier from assigning the work to an employee of one seniority Roster or District to that of another under the Agreement. This Board cannot, by interpretation, add a prohibition against crossing group lines which does not appear in the Agreement of the parties.

The issue presented in this dispute is whether employees of one Seniority District may properly be used to do some work performed by employees of another Seniority District, who are employed by the same Carrier, covered by the same Agreement and work in the same location, in this case, Cincinnati, Ohio.

This Board has held, on numerous occasions, that the transfer of work from one Seniority District to another Seniority District does not constitute a violation of the terms of the Agreement unless there is language in the Agreement to the contrary.

This Board has held, on numerous occasions that the Carrier is free to exercise its managerial prerogatives unless its acts are limited by law or by the Agreement between the parties.

We find no language in the Agreement prohibiting the Carrier to act in the manner in which it did in this dispute before us.

We can find nothing in the record that the work involved, in this dispute, to wit, the handling of mail, was the exclusive work of certain groups of Clerks.

We find nothing in the rules of the Agreement which prohibits the performance of work of a lower classification by a higher rated employee even though the employees are in different groups but employed by the same Carrier.

The Claimant and Mr. Ware were both employed by the same Carrier, covered by the same Agreement, worked in the same location, to wit, Cincinnati, Ohio, although the Claimant was on the Group 5 Roster and Mr. Ware on the Group 3 Roster of the Carrier.

Under the circumstances in this case, and in the absence of any evidence to show an exclusive grant to the employees on the Group 5 Roster of the work under consideration, we hold that the Agreement was not violated.

We are constrained to deny the claim.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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 29th day of January 1969.