



Award Number 17739

Docket Number CL-18193

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John J. McGovern, Referee

PARTIES TO DISPUTE:

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

**UNION PACIFIC RAILROAD COMPANY
(South-Central District)**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6565) that:

1. The Carrier violated the Clerks' Agreement when on November 8, 1967, Electrical Foreman, Mr. Lowe, transported Conductor, Mr. M. H. Walker, from Milford, Utah to Iron Springs, Utah, departing Milford at 11:45 A.M. and returning approximately four (4) hours later.
2. Carrier violated the Clerks' Agreement when on November 23, 1967, they allowed Trainmaster, Mr. Acklin to transport a dog-catch train crew from Milford, Utah to Lund, Utah. Trainmaster Acklin departed Milford at 10:00 A.M., November 23, 1967 and returned approximately four (4) hours later.
3. Carrier violated the Clerks' Agreement when on December 3, 1967, they required and/or allowed Trainmaster, Mr. Roberts, to transport a crew from Milford, Utah to Lynndyl, Utah, an operation that consumed approximately six (6) hours.
4. Carrier shall now be required to compensate Claimant, Mr. Rolan R. Larsen, Crew Dispatcher at Milford Utah for wage loss sustained by him by reason of the above named violations of the Clerks' Agreement in the amount of four (4) hours for November 8, 1967, four (4) hours for November 23, 1967 and six (6) hours for December 3, 1967, all payment to be made at overtime rate of position of Crew Dispatcher at Milford, Utah, which had a monthly rate of Five Hundred Forty-Six Dollars and Sixty-four Cents (546.64) per month.

EMPLOYEES' STATEMENT OF FACTS: Claimant, Mr. Rolan R. Larsen, is employed by the Carrier at Milford, Utah on position of Crew Dispatcher, a position that comes under the jurisdiction of the Brotherhood of Railway, Airline and Steamship Clerks, which he holds by virtue of his seniority under the Clerks' Agreement on Consolidated Station Clerks Roster 81-1 of December 27, 1948.

On date of November 8, 1967, need arose at Milford, Utah for someone to transport a crew from Milford, Utah to Iron Springs, Utah. Instead of

agreements referred to above (Provo and Milford), which have established the precedent of handling train and engine crews by clerks operating company owned vehicles.

"Accordingly, claim is hereby submitted on behalf of Mr. M. R. Arthjan, Mr. J. Thomas and Mr. L. R. Price, furloughed Clerks, Salt Lake Yard Office, for each date train and engine or yard crews are transported by taxi cab at Salt Lake by reason of the above outlined rules."

The Organization's contention in that dispute could not be sustained under the provisions of the Agreement, but the Organization, nonetheless, appealed the claim to the Carriers highest officer of appeal which was denied under date April 20, 1964, and further discussed in conference February 23, 1965, at which time the conditions involved in Third Division Award 13195, disposing of a similar claim on Carrier's Eastern District, were considered and the Organization accepted the Carrier's denial and the claim was not further progressed. Correspondence in connection with these time claims is attached as Carrier's Exhibits J-1 through J-7, in clusive.

(Exhibits Not Reproduced)

OPINION OF BOARD: On the dates specified in the claim, employees other than those coming within the Scope of the Clerks' Agreement, transported by Car other employees from one point on Carriers' line to another. Claimant Crew Dispatcher charges a violation of the Agreement and demands payment at the overtime rate for the number of hours involved in each trip.

The Organization relies principally upon the Scope Rule and a Special Letter of Agreement dated January 17, 1950.

Insofar as the Scope Rule is concerned, it is general in nature, thus placing upon the Organization the burden of proving that the job of transporting employees from one station to another, has been reserved to positions under the Clerks' Agreement exclusively; further, that the reservation of such work has been the traditional and historical custom and practice on the property. The evidence before us indicates otherwise, that is, that employees other than those covered by the Clerks' Agreement, have been transporting employees both in privately owned and Company owned automobiles over a long period of time.

The Special Letter of Agreement does not lend support to the Organizations' contentions, because by its own terms, it merely establishes the qualifications and rates of pay to be allowed when company vehicles are used by the Crew Caller to transport employees. There are no provisions in this letter which would reserve such work exclusively to the Claimant's position or to clerical employees in general.

For the foregoing reasons, we will deny the claim.

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 Employes involved in this dispute are respectively Carrier and Employes 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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 20th day of February 1970.