Award Number 17754

Docket Number CL-18085

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Charles W. Ellis, Referee

PARTIES TO DISPUTE:

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

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6522) that:

1) Carrier violated, and continues to violate, the Clerks' Rules Agreement beginning on April 22, 1967 when it abolished positions of Janitors at Chicago, Illinois and transferred the work thereof to employes who are not subject to the Agreement.

2) Carrier shall be required to return the Watchman duties to employes within the scope of the Clerks' Agreement.

3) Carrier shall be required to compensate employes C. Miner and J. Bourne a day's pay at the time and one-half rate for each Saturday and Sunday beginning July 1st and 2nd, 1967, and for all subsequent Saturdays and Sundays until the violation is corrected.

EMPLOYES' STATEMENT OF FACTS: Prior to April 22, 1967 the Carrier at its Fullerton Avenue Office Building Chicago, Illinois, had in effect two janitor positions who performed watchman duties on Saturdays and Sundays—Position 04130, with assigned hours from 4 P.M. to Midnight, and Position 04170 with assigned hours 8 A.M. to 4 P.M., both having a rate of pay of $20.5124 per day.

On April 14, 1967 Carrier issued Bulletin No. 10 abolishing Janitor Position 04170 effective April 21, 1967.

On April 14, 1967 Carrier also issued Bulletin No. 8 changing the days of assignment of Janitor Position 04130 to Monday through Friday, with Saturday and Sunday rest days. Bids for that position were to be received up to and including April 21, 1967.

Effective with the abolishment of Janitor Position04170, and the change in days of assignment of Position 04130, janitor work as such was discontinued on Saturdays and Sundays and the watchman duties formerly assigned to and performed on those positions were transferred to and have since been performed by employes of the Milwaukee Road Police Department.

The two (2) positions with which we are primarily concerned with here are Janitor Positions 04170 and 04130. Attached hereto as Carrier's Exhibits "A" and "B" are copies of the last bulletins issued prior to April 21, 1967 advertising Janitor Positions 04170 and 04130 respectively.

Effective April 21, 1967, all janitorial duties formerly performed by the occupant of Janitor Position 04170 Saturday through Wednesday and by the occupant of Janitor Position 04130 on Saturday and Sunday were either discontinued account no longer being necessary or transferred to janitor positions within Seniority District No. 83 having an assigned work week of Monday through Friday and, as indicated above, Janitor Position No. 04170 was abolished effective April 21, 1967 and the assigned work week of Janitor Position No. 04130 was changed to Monday through Friday with assigned hours of 3:30 P.M. to 12:00 Midnight, also effective April 21, 1967.

The instant claim involves "watchman duties on Saturdays and Sundays" at Carrier's Fullerton Avenue Office Building which work, by the claim which they have here presented, the employes are contending was work exclusive to Janitor Positions 04170 and 04130, but which, in fact, is not work exclusive to Janitor Positions 04170 and 04130, or any other position within the scope of the Clerks Agreement, as the Carrier will establish in its "Position".

Attached hereto as Carrier's Exhibits are copies of the following letters:

Letter written by Mr. S. W. Amour, Vice President-Labor Relations, to Mr. H. C. Hopper, General Chairman, under date of February 12, 1968 ..... Carrier's Exhibit "C" ..

Letter written by Mr. Amour to Mr. Hopper under date of July 15, 1968 ..... Carrier's Exhibit "D"

(Exhibits Not Reproduced)

OPINION OF BOARD: On April 21, 1967 Carrier abolished Janitor Position #01170 and changed the rest days of Janitor Position #01430 to days other than Saturday and Sunday.

Claim is made by the Organization that Carrier violated the Clerks' Agreement when it assigned certain watchman duties performed on Saturdays and Sunday to employees who are not subject to the Agreement.

The issue of whether these watchman duties had been performed exclusively by the incumbents of the mentioned janitor positions on Saturday and Sunday is vigorously disputed by the parties.

The specific rules involved are as follows:

"RULE 1—SCOPE

(a) These rules shall govvern the hours of service and working conditions of the following class of employes, subject to exceptions noted below:

* * * * *

Group 2

* * * * *

Office, Station and Warehouse
Watchmen

Janitors and Janitresses

* * * * *

"(e) * * * Positions within the scope of this Agreement belong to the employes covered thereeby and nothing in this agreement shall be construed to permit the removal of positions from the application of these rules, except in the manner provided in Rule 57."

"RULE 57—DATE EFFECTIVE AND CHANGES

This Agreement shall be effective as of September 1st, 1949 and shall supersede and be substituted for all rules or existing agreements, practices and working conditions (except those not in conflict with this agreement) and shall remain in full force and effect until it is changed as provided for in the Railway Labor Act, as amended."

"ARTICLE III, Section 1, of the February 7, 1965 Agreement:

The organizations recognize the right of the carriers to make technological, operational and organizational changes, and in consideration of the protective benefits provided by this agreement the carrier shall have the right to transfer work and/or transfer employes throughout the system which do not require the crossing of craft lines * * *."

Organization advances several propositions in support of it's case. It first refers to Award #13190 which holds generally that work remaining to be performed after a position is abolished may not be assigned to an employee not covered by the Agreement. For its second proposition Organization argues that Carrier violated ARTICLE III, Sec. 1 of the February 7, 1965 Agreement which prohibits the transfer of work across craft lines.

Both of these propositions contain, and are dependent upon, the more fundamental issue; i.e. does the work in question belong exclusively to the craft in question?

On this issue Organization cites Rule 1 (e) and a line of cases holding generally that when a rule forbids the transfer of a "position" it likewise forbids the transfer of "work" because those two terms are synonymous. Award 9416, Award 13312 (Coburn), Award 14088 (Coburn).

Carrier defends its actions by asserting that the two terms are not synonymous but that the Scope Rule is general in nature and to claim the exclusive right to perform the work Organization must show that it has by custom and tradition exclusively performed it in the past. Award 11755 (Hall), Award 12148 (Engelstein), Award 12149 (Engelstein), 12360 (Dorsey) 12493 (Wolfe), 12841 (Hamilton), 14064 (Rohman), 14065 (Rohman), and others.

The heart of the issue seems to be the effect of Rule 1 (e). The question is, does that provision prohibit the Carrier from assigning the "work" in question to outside forces?

The purpose of a general scope rule is to identify that part of the employer's work force to which the agreement applies. This identification is accomplishing by describing the positions or types of positions in the scope rule. All general scope rules imply that if such a position exists on the property then the terms and conditions of employment are governed by that

agreement and the Carrier may not apply the terms of a different agreement to that position. This Section 1 (e) says nothing more expressly than most all other general scope rules say by implication.

We cannot follow those cases which hold that the terms "position" and "work" are synonymous. The parties to this dispute in Rule 9 (b) of their Agreement set out what they think the elements of a "position" are. There is a location, title, rate of pay, assigned hours of service, assigned meal period, etc. Also included are the principal duties which is the "work" which is a part of the "position".

It must be concluded that "work" is only a part of a "position" and a limitation on the right to transfer the latter does not necessarily limit the right to transfer the former.

The parties themselves have, in the past, recognized this concept when the Organization has bargained to include the term "work" within Rule 1 (e) but without success. Award 1248 (Engelstein), Award 12493 (Wolfe), Award 14065 and 14064 (Rohman).

This then being a general scope rule we are compelled to conclude that the Employees had the burden to prove that they have exclusively performed the watchman duties in question in the past by custom and practice. We find in favor of the Carrier on this point by finding that outside forces have at some, if not all, times performed the work in question.

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 9th day of March 1970.

Central Publishing Co., Indianapolis, Ind. 46206 Printed in U.S.A.