

Award No. 18028

Docket No. CL-18322

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Paul C. Dugan, Referee

PARTIES TO DISPUTE:

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

KANSAS CITY TERMINAL RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6617) that:

(1) The Carrier violated the rules of the current Agreement between the parties when it abolished Class Two (Gatemen) positions in the Passenger Department and rebulletined same requiring Class Two Gatemen to perform work properly belonging to Class 3 (Janitors) employees.

(2) The Carrier be required to restore the work to the proper class of Employees, and;

(3) Compensate each Janitor furloughed on date of October 11, 1967 or subsequent thereto at pro rata rate and each regularly assigned Janitor at time and one-half rate for rest day work to the extent their seniority would entitle them under existing rules of the Agreement, beginning with October 11, 1967, for each day that Class Two (Gatemen) were improperly used to perform (Janitor) Class Three work, and

(4) Compensate at pro rata rate each Gateman (Class Two) employee beginning October 11, 1967, for each day he was required to suspend work on his regular position to absorb the overtime which would have been payable to Class Three employees who had the right to the work on a rest day call basis.

EMPLOYEES' STATEMENT OF FACTS: Beginning October 11, 1967, the Carrier required Gatemen (Class 2 employees) in the Passenger Department to leave their assignments as Gatemen and escalator operators and report to various locations in the Union Station building proper and station platforms for the purpose of doing general janitorial work which properly belonged to Janitors (Class 3 Employees) in the Janitor Department. The Employees representatives approached management on the local level on behalf of both Classes of employees (Janitors and Gatemen) and protested the use of employees across occupational and seniority class lines and endeavored to bring about a quick reconciliation of the differences to avoid a situation which was deteriorating to the extent that charges of insubordination were threatened, and in fact leveled at one employee. The Carrier adamantly re-

claims. Final conference of October 3, 1968, failed to resolve the dispute resulting in its being referred to this Board for consideration and Award.

(Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS: Gateman positions are Class 2 positions in the Passenger Department whose principal duties in the past consisted of manning of passenger gates to trains and operating escalators for Railroad patrons boarding and detraining from passenger trains at Kansas City Union Station.

Due to a drastic decline in passenger trains operating through Kansas City Union Station, and the corresponding decline in patron traffic the work of Gatemen was reduced to a point where there was not a reasonable amount of gateman work to be performed by the protected gatemen.

On November 20, 1967, all gatemen were assigned to also perform general janitor duties as necessary when not performing other assigned duties.

Claims were presented on behalf of regularly assigned janitors, and one furloughed janitor, for rest day calls account janitor work performed by gatemen. The claim for janitors was progressed within time limits and was denied by the final appeals officer on July 24, 1968.

A claim originally initiated on behalf of regular gatemen account performing janitorial duties was not progressed to the final appeals officer and is improperly included in the appeal to your Board. Attached is copy of General Chairman L. D. Graham's letter of June 17, 1968, (Carrier's Exhibit No. 1) which made final appeal to the Manager of Personnel, and copy of reply dated July 24, 1968 (Carrier's Exhibit No. 2) denying the claim. Reference is made in the appeal and reply to the janitors' claims only.

Therefore, Item (4) of the Employees' Statement of claim has not been handled in the usual manner on the property and should be dismissed.

(Exhibits not reproduced.)

OPINION OF BOARD: By bulletin dated November 13, 1967, Carrier abolished all positions in the gate force effective upon completion of tour of duty, November 20, 1967. On November 14, 1967, Carrier bulletined Class 1 (Usher Captain) Positions and Class 2 (Gatemen) Positions and included "general janitor work" as part of the duties of said positions, and further advised in said bulletin "and can be used on general janitor work when not doing other assigned duties."

The Organization protested the propriety of said bulletin claiming that the inclusion of janitor work in their assignments is work of which said Gatemen and Usher Captains hold no seniority rights, inasmuch as said janitor work belongs exclusively to Class 3 employees (Janitors); that Class 3 employees (Janitors) protested the assignment of their work to employees not holding seniority rights to said work.

Carrier defended on the property (a) that the Agreement does not confer upon Class 3 (Janitors) the exclusive right to perform the work in question and that Class 2 (Gatemen) were properly required to perform some janitor duties on the claim dates; (b) that there is no Agreement provisions which bars the assignment of janitor duties to a Class 2 (Gateman) position; (c) that transfer of work between positions under one craft is contemplated under the Job Stabilization Agreement of February 7, 1965, since the said Job Stabi-

lization Agreement specifically permits the transfer of work throughout the system which does not require the crossing of craft lines (Article III, Section 1); (d) that the claim is vague and indefinite because of a blanket claim for janitors with no dates or reference to work performed by other employees and because of lack of evidence that any of janitor claimants were available for additional work and because of most of the work in question probably occurring while the claimant janitors were on duty and under pay; (e) that Item (4) of the Statement of Claim was not handled in the usual manner on the property and should be dismissed.

Carrier attacks the jurisdiction of this Board to consider this dispute on the grounds that the claim involves interpretation of the February 7, 1965 Mediation Agreement, which Agreement specifically provides that disputes arising thereunder shall be disposed of by a "Disputes Committee" as set forth in Article VII, Section 1 of said Agreement.

The Organization contends that the February 7, 1965 Job Stabilization Agreement is not involved in this dispute because the action was not a transfer of work as contemplated by said Stabilization Agreement.

However, Carrier, as one of its defenses to this claim, relied on the provisions of said Stabilization Agreement in denying the claim. Therefore, inasmuch as said Stabilization Agreement provides the machinery to handle a dispute as is presently involved herein, namely, to the Disputes Committee, then it is our conclusion that the proper forum for the determination of this dispute is said "Disputes Committee." Therefore, we will dismiss this claim without prejudice. See Award No. 17639, where this Board concluded: "Sufficient authorities have been cited which uphold and enforce a system of settling disputes which has been agreed upon by the parties themselves. Award 9388 (Rose), Award 10360 (Schedler), Award 14471 (Ives) and Award 14979 (Ritter)."

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 claim should be dismissed.

AWARD

Claim dismissed without prejudice.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION**

**ATTEST: S. H. Schulty
Executive Secretary**

Dated at Chicago, Illinois, this 17th day of July 1970.

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