



Award No. 18061
Docket No. CL-18419

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**

DULUTH, MISSABE AND IRON RANGE RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6674) that:

(1) Carrier violated the effective Agreement, specifically Rules 1 and 2, when commencing May 13, 1968, and on each subsequent date, employees not of this Craft and Class performed clerical work.

(2) Claimants John Gallatly, Donald Larson and John Walczynski shall now be compensated at their respective rates of pay for three (3) hour's each at the overtime rate for each work date commencing May 13, 1968, and for each subsequent date that this violation continues.

EMPLOYEES' STATEMENT OF FACTS: Claimants are Carrier employees holding seniority in Seniority District No. 4, Maintenance of Way Department, Missabe Division. This dispute has arisen due to Carrier having assigned clerical work incidental to floating gangs to Assistant Foremen employed on the floating gangs.

The work performed by the Assistant Foremen involves material requisitions, timekeeping, overtime reports, ordering of supplies, material inventory, employment records for new employees and other work of a clerical nature.

The floating gang, during the period of this claim, was involved in the replacement of jointed rail with welded rail on the Missabe Division of the Carrier. The floating, or extra gang, is seasonal in nature and is established during the Summer months to perform major maintenance and replacement.

The clerical work performed by the two (2) Assistant Foremen exceeded four (4) hour's per day. The work incidental to the floating gangs was performed by a Timekeeper of this Craft and Class many years ago. In more recent years the number of employees on floating gangs had not been

not requiring special skill or training such as those for duplicating letters and statements, perforating papers, addressing envelopes, numbering claims and other papers, and adjusting dictaphone cylinders, or work of like nature, nor to employees gathering mail or other similar work not requiring clerical ability.

"(2) Office boys, messengers or other employees doing similar work.

"(3) Employees performing manual work not requiring clerical ability."

The assistant foremen referred to in this case are represented on this property by the Maintenance of Way Employees Union.

Timekeepers, represented by the Brotherhood of Railway Clerks, have not been employed on track maintenance gangs for many years. Track Department foremen and their assistants have, historically, maintained material reports and kept time for their track maintenance gangs.

The claimants were actively at work on regular assignments in the Maintenance of Way Department at Proctor during the hours when the work, which is the subject of this dispute, was performed.

Copies of correspondence involved in the handling of the claim on this property are attached and marked as Carrier's "Exhibit A."

(Exhibits not reproduced.)

OPINION OF BOARD: The Organization filed a time claim account of non-clerical employees, in this instance Assistant Foremen, performing timekeeping, material record handling and various other clerical duties in violation of Rules 1 and 2 of the Agreement.

The Organization contends that Carrier violated the Agreement by assigning clerical work incidental to floating gangs involved in the replacement of jointed rail and welded rail on Carrier's Missabe Division to Assistant Foremen employed on said floating gangs; that the Carrier did not dispute on the property that the clerical work performed by said Assistant Foremen exceeded four (4) hours' work each day; that Carrier settled similar claims with the same Claimants herein in 1968 for assigning clerical work to a Maintenance of Way Laborer; that Assistant Foremen have not performed clerical work on floating gangs in excess of four (4) hours in the past and such performance of work violates Rules 1 and 2 of the Agreement; that when the volume of the clerical work of the floating gangs increased due to larger floating gangs so as to require clerical assistance to Foremen performing said clerical work, said rules of the Agreement requires that employees of the Clerk's Craft be assigned to perform said clerical work; that in the past when Foremen could not perform the clerical work incidental to his duties as Foreman, a Timekeeper or employees of the Clerk's Organization, and not an Assistant Foreman, has performed said work; that the work in dispute has not been performed by Assistant Foremen but has historically and traditionally been performed by clerical employees when the Foremen could not perform such duties.

Carrier denied this claim on the property on the grounds that: (a) claim is not specific; (b) Timekeeping, material reports are being performed and processed currently the same as always and the same as has been done in the past; (c) Claimants are fully employed and suffered no loss in earnings from their regular assignments; (d) claim for overtime payment is excessive in that the overtime claimed was not worked or earned as required by Rule 31; (e) timekeepers have not been employed in any gangs for years; (f) the work in dispute has not been the exclusive work of clerical employees, since other than clerks have performed this work for many years.

The issue is whether or not Carrier violated the Agreement when it permitted Assistant Foremen to perform the work of timekeeping and material record handling.

We are here dealing with a general scope rule in Rule No. 1 of the Agreement. Rule No. 2 of the Agreement does not specifically mention the position in question or its duties. See Award No. 9213.

Therefore, inasmuch as the Scope Rule here in question is general in nature, it is incumbent on the Organization herein to prove that the work in question has been exclusively performed by employees of the Clerk's Organization historically, customarily and traditionally system-wide. This burden of proof the Organization has failed to meet. The Organization has made many assertions without corroborating evidence, which are of no probative value. Notwithstanding Carrier failed to deny on the property that the Assistant Foremen worked more than four (4) hours in performing the work in question, nevertheless, with a general Scope Rule involved herein, the Organization has the burden of proving "exclusivity" and failing to do so, we must deny the claim. See Award No. 16550, where this Board stated:

"... The issue narrows as to whether the work had been performed system-wide exclusively by employees covered by the Agreement prior to the Plan being put in effect. On the property, in response to the Claim, Carrier averred it had not. Thus put Petitioner to its proof.

"The case law of this Board makes axiomatic the following principles in interpreting and applying a general in nature Scope Rule relative to an organization's claim to exclusive right to certain work:

'When the Agreement is system-wide the Organization, when challenged, has the burden of proving that the work involved has been performed, historically and customarily, system-wide by employees covered by the Agreement. Proof that it had been performed accordingly at an isolated situs does not satisfy the principle. See, for example, Award Nos. 12360, 12462, 13914, 13605, 13580, 13400, 13284, 13280, 13195, 12356, 12897, 12787, 12381, 12109, 11605, 12415.'

"As we have so often said the burden which a Petitioner bears to satisfy the principles is harsh. However, the many years ancestry of the principles must be honored in the interest of uniformity and stabilization throughout the industry. Be there any who find the

principles repugnant — and we know there are some — their remedy lies in collective bargaining.”

For the aforesaid reasons we must deny this 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 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 31st day of July 1970.