



Award No. 18803

Docket No. CL-19057

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

Gene T. Ritter, Referee

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**PARTIES TO DISPUTE:**

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

**ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY**

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood (GL-6892) that:

(1) The Carrier violated the terms of the current Agreement between the parties at Birmingham, Alabama on or about October 21, 1969 when it required the Industry Yardmaster, an employe who holds no seniority or other rights under the Clerks' Agreement to perform messenger work which is regularly required to be performed by the Claimant.

(2) Mr. Percy Gardner, occupant of Messenger Position No. 20 and/or his successors and also to include employes relieving on Mr. Gardner's rest days, until the violation is corrected be allowed eight hours at penalty time for each work day beginning October 21, 1969 and continuing until the violation is corrected.

**EMPLOYEES' STATEMENT OF FACTS:** On October 21, 1969, Agent-Trainmaster B. N. Rawlinson issued written instructions to the Chief Yard Clerk that when the waybills and consists are available from the Seaboard Coast Line 32nd Street Yard located on the south side of the City of Birmingham, approximately six miles away, the Car Clerk is to advise the Industry Yardmaster of the consists availability and then the Yardmaster will go to the Seaboard Coast Line facility contacting the clerical employe in charge in order to obtain copy of the consists and then deliver this copy to the clerks in the Frisco yard office, work which has previously been assigned to and performed by messenger positions or those coming within this craft at Birmingham for many, many years. See Employees' Exhibit No. 1.

The transportation of mail and such other forms of information has historically been within the scope of the usual and normal messenger services which has historically been assigned to the Clerks' Organization and should continue to be defined and designated as work of clerical forces as defined under the Scope and operation of the Clerks' Agreement.

These claims have been handled with management up to and including the Director of Labor Relations, but not composed. See Employees' Exhibits 2(a) through 2(c) inclusive.

(Exhibits not reproduced.)

**CARRIER'S STATEMENT OF FACTS:** This dispute arose in Thomas Yard, Carrier's Birmingham, Alabama Freight Terminal.

Prior to the claim date, Carrier was experiencing considerable delay of northward trains out of Thomas Yard. One reason for such delay was due to lack of advance information on cars received in interchange from connecting lines. It was common practice at that time for connecting lines to forward a list of cars along with waybills at the time of delivery of the cars to this Carrier. In other words, the connecting line engine foreman, or switchman, delivered the waybills and list to this Carrier with the cars delivered in interchange.

During October, 1969, arrangements were made with connecting line Carriers to furnish this Carrier with copies of consists on trains prior to their arrival in the connecting line yards. On receipt of such consists the connecting line telephones this Carrier advising that such consists are available. This Carrier arranges for someone, usually an industry yardmaster, or trainmaster, in the area of the connecting line yard office, to pick up the advance consists, and occasionally, if available, the waybills for cars destined to this Carrier.

The advance information permits expeditious handling of waybills and cars through Thomas Yard.

**OPINION OF BOARD:** This claim arose when on October 21, 1969, Carrier's Agent-Trainmaster issued written instructions to the Chief Yard Clerk that when way bills and consists are available from the Seaboard Coast Line, 32nd Street Yard, the Car Clerk is to advise the Industry Yardmaster of the consists availability and then the Yardmaster will go to the Seaboard Coast Line facility contacting the clerical employee in charge in order to obtain copy of the consists and then deliver this copy to the Clerks in the Frisco Yard office. The Organization contends that this work has previously been assigned to and been performed by messenger positions or those coming within the Clerks' Craft at Birmingham for many years. The Organization relies upon Rule 1 (Scope); Rule 2 (Definition of Clerk); Rule 3 (Seniority); and Rule 77 (Date Effective and Changes). The Organization contends that this work has never been regularly assigned to others outside the scope of the current Agreement, and is reserved exclusively to those coming under the purview of the Clerks' Agreement. Carrier denies that the Clerks have an exclusive right to handle advance consists and way bills and maintains that Yardmasters and Trainmasters' handling of these consists and waybills does not violate the Scope Rule of the effective Agreement. Carrier also denies that this work has been traditionally and customarily performed on a system wide basis exclusively by Clerks; and that no positions have been abolished due to other than Clerks carrying consists and waybills, and, therefore, no loss has been sustained by Clerical employees.

This Board finds that the contentions of the Carrier are well taken. The Scope Rule in the involved Agreement is general in nature, and, therefore, the burden of proving exclusivity performed by clerical employees, system wide, by practice, custom and tradition. The Organization has failed to meet this burden of proof. There are many awards upholding this principle and several involving these same parties, among which are: 16470 (McGovern); 16356 (Zack); 15695 (Dorsey), and 15394 and 15393 (both by Hamilton). Therefore, this claim will be denied.

**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: E. A. Killeen**  
Executive Secretary

Dated at Chicago, Illinois, this 12th day of November 1971.