

Award No. 18921

Docket No. CL-16754

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Paul C. Dugan, Referee

PARTIES TO DISPUTE:

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

**CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6108) that:

1. Carrier violated the Clerks' Rules Agreement at Milwaukee, Wis. when it removed work covered thereby and assigned it to employees of another craft and class holding no seniority in District No. 118.

2. Carrier shall now be required to compensate employee Earl Augustin for three (3) hours at the overtime rate of Chauffeur Position 5174 for May 12, 1965.

EMPLOYEES' STATEMENT OF FACTS: Employee Earl Augustin is the regularly assigned occupant of Chauffeur Position 5174 in the Material Division, Seniority District No. 118 at the Milwaukee Shops, Milwaukee, Wis. His seniority date is April 28, 1941.

Position No. 5174 is assigned from 7 A. M. to 3:30 P. M., Monday through Friday, with Saturday and Sunday rest days.

The work of transporting materials for shipment throughout the property by LCL, Baggage, Express, Carload lot, etc. to the point of loading, is work which has been assigned to and performed by Material Division employees in Seniority District No. 118 at Milwaukee, Wis. for the past 25 years or more. This work was and has been performed by such employees both prior to and since September 1, 1949 when the provisions of Rule 1(e) retaining for the employees covered by the Clerks' Agreement the right to continue to perform work theretofore performed by such employees became effective.

On May 12, 1965, employees in the Signal Section of the Material Division were advised that approximately 1700 pounds of signal material would have to be packed and made ready for baggage shipment to Savanna, Illinois. The completed order consisted of 45 cartons of material which was ready for transporting to the depot baggage room by 1:30 P. M.

OPINION OF BOARD: The Organization claims that Carrier violated the Agreement when it permitted signal employees to transport 45 cartons of signal material from the Store Department, Milwaukee, Wisconsin for baggage shipment from Milwaukee to Savanna, Illinois. The Organization contends that chauffeur's work in connection with the transporting of material for shipment, throughout the property by LCL, Baggage, Express, Carload Lot, etc. to the point of loading, is work which has been assigned to and performed by Material Division employees in Seniority District No. 118 at Milwaukee, Wisconsin for the past 25 years or more; that this work was and has been performed by such employees both prior to and since September 1, 1949 when the provisions of Rule 1(e), retaining for the employees covered by the Clerk Agreement the right to perform work theretofore performed by such employees, became effective.

Rule 1 — Scope, the pertinent parts thereof provide as follows:

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

* * * * *

Group 2. * * *

Crane Operators, Chauffeurs, Truck Drivers, Tractor Operators and operators of other automotive equipment and their helpers.

* * * * *

* * * * *

(e) The inclusion of: 'Crane operators, chauffeurs, truck drivers, tractor operators, lift truck operators and operators of other automotive equipment and their helpers' in Group 2 of Rule 1 (a) is intended to retain for these employees the right to perform the work with these machines that has heretofore been performed by these employees, and does not establish the right to perform such work now covered by other agreements.

* * * * *

Carrier's position is that the Scope Rule does not delineate work but lists positions and this Board's Awards hold that where such scope Rule lists positions, instead of delineating work, it is necessary to look to tradition, historical practice and custom to determine the work which is exclusively reserved by the Scope Rule to persons covered by the Agreement; that the letters and notarized statements (Carrier's Exhibits "D" through "R") clearly and conclusively indicate that the work of "transporting of materials being shipped throughout the property by LCL, Baggage, Express, Carload, etc." is neither work reserved exclusively to Claimant Augustin nor other employees within the scope of the Clerks' Agreement, but instead is work which is now and always has been performed by various classes of employees, including Signalmen.

The Brotherhood of Signalmen submitted a submission to this Board alleging that work of handling signal material work is signal work covered by the Scope of the Signalmen's Agreement.

We are confronted with a General Scope Rule in this dispute, which lists positions rather than work, and this Board has consistently held in a long line of Awards that Claimant has the burden of proving that the work involved has by history, custom and practice been performed exclusively, in this instance by Clerks under the Agreement.

Carrier submitted affidavits wherein it was stated by various Craft employes that said Craft employes have at Milwaukee Shops loaded material into box cars, baggage cars, and other means for shipment to other points. See Carrier's Exhibits "D", "E", "F", "G" and "K".

Therefore, we find that Claimant failed in this instance to prove that the work here in question was exclusively reserved by history, custom and practice to Clerks under the Agreement, and we must thus 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.

AWARD

Claim denied.

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

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

Dated at Chicago, Illinois, this 7th day of January 1972.

Keenan Printing Co., Chicago, Ill.

Printed in U.S.A.