

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19264
Docket Number CL-18126

Gene T. Ritter, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
(
(Chicago, Burlington & Quincy Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6533)
that:

1. The Carrier violated and continues to violate the rules of the Clerks' Agreement effective January 1, 1961, particularly Rule No. 1 - Scope, and Rule No. 3 - Definition of Clerks and Machine Operators, and Interpretation (1) thereto, when, without conference or agreement it arbitrarily and unilaterally required various employees not coming within and under the craft of clerical, office, station and storehouse employees to perform the work of making physical check of cars at Lincoln, Nebraska for a "check list" to be used in its perpetual car inventory records.

2. Yard Clerks H. F. Brt, Jr., and A. George shall now be paid eight (8) hours' pay at time and one-half rate of the position of Yard Clerk, Jobs #1414 and #1417, respectively, rated at \$22.07 per day, beginning October 8, 1966 and each work day thereafter, Monday through Friday, until the violation is corrected.

OPINION OF BOARD: Prior to June of 1966, Clerical forces of Carrier at Carrier's classification yard at Lincoln, Nebraska physically checked and marked cars by station number as they passed over the hump. This function was performed for the purpose of classifying inbound trains and separating them onto various tracks according to their destination. In June of 1966, Carrier installed IBM equipment at the Lincoln Yards in connection with its perpetual car inventory system (PCI). After the installation of the PCI program, most of the Clerks were relieved of the duties of making physical checks and car marking. The Organization contends that Carrier violated the Agreement when it abolished positions occupied by Clerks and reassigned part of the duties thereof (checking cars and making lists of cars for use in the PCI system) to Carmen, Switchmen, Retarder Operators, and Yardmasters. Carrier defends its action in this instance by alleging that the involved work was never exclusively performed by Clerical employees or was work never performed by anyone prior to implementation of the PCI program; that the work as now performed is being performed in the same manner on other of Carrier's locations; that any physical car checking remaining is still performed by Clerks; and that Carrier has the right, in the interest of economy and efficiency to determine the manner in which work operations are performed.

For the reason that the question of Yardmaster performing Clerical work at Lincoln being handled on the property, the same will not be considered in resolving this dispute.

The Organization claims the involved work on the theory that it has exclusive right to such work based upon the Scope Rule, the Classification Rule, and local past practice. A careful examination of the Scope Rule reveals that it is general in nature, and, therefore, the Organization has the burden of proving exclusivity to the involved work by practice, custom and tradition on a system-wide basis. Although the record is abundant with allegations concerning exclusivity of the involved work, the record is barren of any probative evidence. The Organization has provided the record with certain exhibits showing that Clerks have performed this work; however, there is no proof that Carmen, Switchmen and Retarder Operators have not also performed this work.

The work being performed by employees of the Carmen's Craft at Lincoln was either performed by Carmen prior to the implementation of the PCI program or was never performed by anyone prior to the implementation of such program.

The record also bears out the fact that Switchmen prepared Form 4024 many years prior to the PCI program. This PCI program made it unnecessary for Clerks to make a physical check at the involved location. The record discloses that no clerical work was added to Switchmen's duties. Upon invocation of the PCI program, Carrier eliminated the requirement of Clerks making a physical check of cars. There was no transfer of work to Switchmen.

The record further discloses that the Retarder Operator in "B" Tower has always performed the duty of **noting discrepancies** on his copy of the train list. After the invocation of the PCI program, he (Retarder Operator) now informs the PCI Clerk of such discrepancies. This duty does not constitute transfer of work from Clerks to the Retarder Operator in "B" Tower.

The action taken by Carrier as reflected by the record, discloses that such action was taken in the interest of efficiency and economy. Carrier has the right and obligation to operate efficiently and economically and by having that right, has the prerogative and discretion to make changes, not contrary to the Agreement, in the interest of efficiency and economy.

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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

E. A. Kellum
Executive Secretary

Dated at Chicago, Illinois, this 9th day of June 1972.

LABOR MEMBER'S DISSENT TO AWARD 19264 (DOCKET CL-18126)
Referee Ritter

Award 19264 (Docket CL-18126) is an unadulterated perversion of the arbitration decisional process.

Award 19264 contains sheer nonsense. For instance, in the third paragraph it is written:

"Although the record is abundant with allegations concerning exclusivity of the involved work, the record is barren of any probative evidence. The Organization has provided the record with certain exhibits showing that Clerks have performed this work; however, there is no proof that Carmen, Switchmen and Retarder Operators have not also performed this work."

This is grotesque - obviously, if there is no proof that Carmen, Switchmen and Retarder Operators have not also performed this work, and the Organization has provided the record with Exhibits showing that Clerks have performed this work, then the record certainly cannot be barren of any probative evidence.

Probative evidence has three characteristics:

- (1) Having the effect of proof;
- (2) Tending to prove; or
- (3) Actually proving.

The thirty-three Exhibits submitted by the Organization, along with the correspondence exchanged by the parties on the property, have at least one if not all of these characteristics, and the fact that there is "no proof that Carmen, Switchmen and Retarder Operators have not also performed this work" does not make such characteristics of probative evidence any less valid. To indicate that the evidence submitted is without

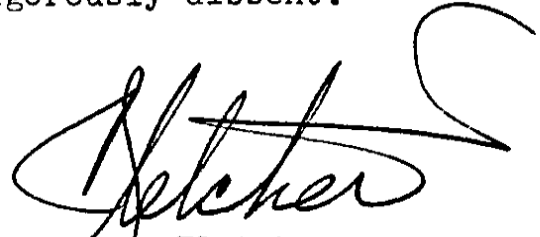
probative value on the basis that there is no juxtaposed contrary "proof" is clearly a manifest perversion of the decisional process.

The corrupted tests established by this Referee in this case require; first, that the Petitioner prove his case; and second, that he disprove all possible stated or imagined aspects of Respondent's case beyond the realm of speculation on silent or non-existent facets.

For instance, if an individual was charged with the commission of a crime at a certain location on a certain date and time, to prove his innocence of the crime he would merely be required to establish that he was not at the location when the crime was committed. The decisional process would then logically conclude that having established that the charged individual was not at the location on the date and at the time of the commission of the crime, he, therefore, could not have committed the crime. To prove his innocence, the individual would not be charged with proving that somebody else committed the crime, or that it was not possible for him to commit the crime were he there when it was committed, or that it was possible for him to be at the location at the time the crime was committed. The decisional process only requires that he establish that he could not have committed the crime because of time and location. The fact that he did not submit "proof" on

other aspects would not fatally destroy his proof of innocence. Anything different is a perversion of the decisional process. Such a perversion we have in the instant Award, as is demonstrated in the above-quoted portion of the Award and in other portions thereof which cannot be reconciled with the record.

For these reasons, I must vigorously dissent.

A large, stylized handwritten signature in black ink, appearing to read 'J. O. Fletcher', with a long horizontal flourish extending to the right.

J. O. Fletcher,
Labor Member

6-13-72