

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19492
Docket Number CL-19424

Arthur W. Devine, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
(George P. Baker, Richard C. Bond, Jervis Langdon, Jr.,
(and Willard Wirtz, Trustees of the Property of
(Penn Central Transportation Company, Debtor

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6960) that:

(a) The Carrier violated the Rules Agreement, effective May 1, 1942, except as amended, particularly the Scope, when the assigned duties of clerical employees were assigned to Block Operators at Anacostia Tower, Benning Yard, Washington, D. C., Chesapeake Division, as of April 1, 1967.

(b) M. H. McGuire, W. B. Wyne, G. A. Johnson, Crew Clerks, Benning Yard, Washington, D. C. be allowed a day's pay each, beginning April 1, 1967, as claimed. (Docket 2379)

OPINION OF BOARD: The claim herein arose because of Block Operators at Carrier's Anacostia Tower being required to speak into a telephone instrument the car numbers and initials of each car in southbound trains as the trains move past the tower at reduced speed. The telephone instrument in Anacostia Tower is connected with a recording instrument in Potomac Yard, which instrument records the information spoken into the telephone instrument by the Block Operators at Anacostia.

The Petitioner relies primarily upon the Scope Rule of the Agreement. In the handling of the dispute on the property the Carrier contended that the work involved was not work reserved exclusively to the clerks by practice, custom, tradition or agreement.

In Award 16544, involving the Scope Rule of the same agreement as involved herein, and in which this Referee participated, we held:

"In prior Awards of this Division involving the same Scope Rule as involved herein, which is general in character and does not purport to describe or define work, we have held that it is necessary to look to past practice,

"tradition and custom to determine whether the work complained of is reserved exclusively to employees covered by the Agreement, and that the burden of proving that such work is reserved exclusively to employees covered by the Agreement by tradition, custom and practice is upon the Petitioner. We have also held that the Petitioner must show conclusively that the past practice, tradition and custom is co-extensive with Carrier's system. Awards 10615, 11963, 12556, 12923. The Petitioner has not met the requisite burden of proof."

Applying the foregoing principles to the present dispute, we find that the Petitioner has failed to prove that the work complained of is reserved exclusively to clerks. Furthermore, in Award No. 16597 this Division denied claim of R. F. & P clerks, at Potomac Yard, because of the work being performed by this Carrier's block operators at Anacostia Tower. The 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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: E. A. Killen
Executive Secretary

Dated at Chicago, Illinois, this 17th day of November 1972.