

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19517
Docket Number CL-18598

Frederick R. Blackwell, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
PARTIES TO DISPUTE: (
(Southern Pacific Transportation Company (Pacific Lines)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6687)
that:

(a) The Southern Pacific Company violated the current Clerks' Agreement when at Guadalupe, California, it abolished Position No. 7, Waybill Clerk, effective March 13, 1961, and required or permitted employees not covered by the Clerks' Agreement to perform certain of the duties previously assigned to Position No. 7;

(b) The Southern Pacific Company shall now be required to allow Clerk E. E. Estes eight (8) hours compensation at the applicable straight time rate of Position No. 7, in addition to all other earnings, for March 13, 1961, and continuing until April 20, 1961, when Position No. 7 was reestablished and the work involved restored under the Scope and operation of the Clerks' Agreement.

OPINION OF BOARD: This is a scope claim arising under an Agreement between the parties bearing effective date October 1, 1940, reprinted May 2, 1955, including subsequent revisions.

Third party notice has been given to the Transportation-Communication Employees Union.

FACTS

Immediately prior to March 13, 1961, the station force at Guadalupe, California, consisted of the following positions.

<u>"Position</u>	<u>Assigned Hours</u>	<u>No. of days in week service performed</u>
No. 1 Agent	8:00 AM-5:00 PM	6
No. 2 1st Telegrapher-Clerk-PMO	8:00 AM-4:00 PM	7
No. 3 2nd Telegrapher-Clerk-PMO	4:00 PM-12:00 MN	7
No. 4 3rd Telegrapher-Clerk-PMO	12:00 MN-8:00 AM	7
Relief Telegrapher		

No. 6 Cashier	8:00 AM-5:00 PM	5
No. 7 Waybill Clerk	1:00 PM-10:00 PM	6
No. 14 Freight Clerk	7:00 AM-4:00 PM	7
No. 22 Ticket Clerk Relief Clerk"	3:00 PM-11:00 PM	7

Employees covered by the Clerks' Agreement filled Positions No. 6, 7, 14, and 22, and the Position of Relief Clerk. Employees covered by the Telegraphers' Agreement filled Positions No. 1, 2, 3, and 4, and the Position of Relief Telegrapher. Prior to March 13, 1961, Telegrapher Position No. 3 performed about six hours of wire work and two hours of clerical work; Position No. 4 performed about five hours of wire work and three hours of clerical work.

Effective close of work day on March 13, 1961, Clerical Position No. 7 was abolished by Carrier. The position was reestablished on April 20, 1961.

During the period of abolishment of the position, the preponderance of the work of the abolished position was required to be absorbed by Clerk Position No. 22. The parties agree that some of the remainder of the work went to Telegraphers Positions No. 2 and 3. Petitioner asserts some of the remainder also went to the Agent Position No. 1, as evidenced by written statement of claimant dated January 7, 1964. However, Carrier asserts that all duties of the abolished position "were absorbed by clerical position No. 22 (Ticket Clerk) and 1st and 2nd trick telegrapher-clerks (Telegrapher Positions No. 2 and 3)".

Claimant, Clerk E. E. Estes, occupied Clerk Position No. 22 prior to and during the period of abolishment of Clerk Position No. 7, as well as after its reestablishment on April 20, 1961.

The pertinent Scope Rule reads as follows:

"SCOPE

Rule 1.

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

(1) Clerks--

- (a) Clerical Workers
- (b) Machine Operators

(2) Other office, station and store employees--
such as office boys, messengers, chore boys,
train announcers, gatemen, baggage and parcel
room employees, train and engine crew callers,

"operators of certain office or station appliances and devices, telephone switch board operators, elevator operators, office, station and warehouse watchmen and janitors.

- (3) Laborers employed in the around station, storehouses and warehouses."

CONTENTIONS OF PARTIES

Petitioner contends the Agreement was violated when a clerical position with eight hours of work thereon was nominally abolished by Carrier and its duties parceled out to a surviving clerical position and to telegraphers working around the clock. Petitioner also asserts that the subject work was "work ordinarily and customarily assigned to and regularly performed theretofore by the clerical forces at that particular point and every other location on the system ..." and that "To the best of our knowledge, all such work has historically been performed, system-wide, by employees covered under the scope of the Agreement".

Carrier contends that the performance of clerical duties as alleged by Petitioner has not and has never been the exclusive right of clerical employees, either at Guadalupe or at any other point on Carrier's property. Carrier further asserts that the abolishment of the position, due to a decline in perishable freight, and the rearrangement of its work was in conformity with a long standing practice at Guadalupe station when seasonal business declined. Carrier also contends that claimant worked Position No. 22 throughout the claim period and, hence, cannot be shown to have sustained any loss by reason of Carrier's action.

RESOLUTION

On the record before us we find the facts to be that after and during the period of the abolishment of Clerical Position No. 7, the preponderance of the remaining work of such position was absorbed by Clerical position No. 22 with the remainder being assigned to Telegrapher-Clerk Positions No. 2 and 3. The record fails to establish that the abolished position had eight hours of clerical work to perform or that any of the remainder went to Agent position No. 1.

In urging a violation of the Scope Rule of the Agreement in this case, Petitioner submitted an exhaustive survey and analysis of the fifty (50) plus scope disputes which have come to the Board from the property of this Carrier. Starting with early Awards 615 and 636 (both Swacker), the survey discusses all of the subsequent Awards interpreting the clerks' scope rule on this property. The conclusion reached in the survey is that, with the exception of the "ebb and flow" and "incidental work" rules, the case law clearly established by these Awards is that "all work normally and customarily assigned to employees comprising the craft encompassed in the classification of the Scope Rule belongs exclusively to members of that craft.". The survey further states that the better-reasoned Awards, including Awards 19317 and 19318, clearly show the error of the exclusivity rule.

We have carefully and thoroughly studied the survey, the Awards discussed therein, as well as the great number of Awards cited by Carrier. But we cannot agree with the survey's conclusions.

In order to reach its conclusions, the survey made a great number of special interpretations of prior Awards, including the designation of various Awards as erroneous or as lacking in value as a precedent. After appraisal of this part of the survey, we fail to see that these special interpretations provide any enlightenment in respect to the case at hand.

In regard to Award 615 (Swacker), which Petitioner apparently views as acceptable authority, the survey points out that this Award did not deal with anything but clerical work assigned to Telegraphers. Since clerical work assigned to telegraphers is the subject of the instant claim, Award 615 supports the action taken by Carrier in this case, for, in that Award this Board stated:

"...For obvious reasons in diminution of force, a clerk cannot undertake or be accorded telegrapher's duties but the converse is not true; on the contrary, where two positions are involved, one, that of a clerk, and the other, that of a telegrapher, and one is to be abolished, the **telegrapher--** if any telegraph duties remain--has the absolute right to the position including the assumption of the remaining clerical duties. As previously stated, this condition subsisted at the time, long before, and ever since clerks agreements were executed and they were made in the light of these conditions which are a clear limitation or exception to the exclusive right of clerks to the performance of clerical duties."

Petitioner also points to Awards 19317 and 19318 (both O'Brien) as examples of recent Awards on this property which ignore arguments on "system-wide practice" and "test of exclusivity". However, another recent scope Award on this property, Award 19233 (also O'Brien), shows no inclination to ignore the system-wide rule, but, to the contrary, expressly recognized the rule as controlling in the case. In Award 19233, involving these same parties and Agreement, this Board ruled:

"We next turn our attention to the situation as it existed commencing July 30, 1962, or the period subsequent to the abolishment of Position No. 344. To prove a violation of the Agreement following the abolishment of Position No. 344, the Petitioner must necessarily rest its case on the Scope Rule of the existing Agreement. In 1953 the instant Scope Rule was before this Board in Award 6269; therein we stated:

"The Scope Rule in the Agreement before us is general in character, and in no way defines the work to be performed, nor does it allow the Organization the exclusive right to all clerical work to be performed.'

The matter again came before this Board in Award 15752 where it was written:

'* * *In a multitude of Awards, which are too numerous to require citation, this Division has held that a past practice must be system-wide in order for it to be controlling in cases where, as in this case, the Agreement is system-wide.'

Petitioner submitted no evidence to overcome either of these Awards. Accordingly, we will deny Items (b) and (d) of the Claim."

In accord with Award 19233 we find that the Scope Rule herein has already been held by the Board to be what is called a general scope rule and that the exclusivity rule is applicable thereto. The majority of recent Board Awards establish that in such a case, in order for employees to prevail on claim that work within the scope of their agreement has been improperly assigned to and performed by persons outside the agreement, it must be established by a preponderance of the evidence that the disputed work has historically been performed exclusively by the complaining employees on a system-wide basis.

The record shows that the Petitioner has not carried this burden in the instant situation and, indeed, has submitted no evidence whatever on the question of exclusive performance of the disputed work on a system-wide basis. We shall therefore deny the claim.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employee involved in this dispute are respectively Carrier and Employee 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

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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 20th day of December 1972.