

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19800
Docket Number CL-19563

Frederick R. Blackwell, Referee

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-7044)
that:

(1) Carrier violated the Agreement between the parties at Birmingham, Alabama beginning August 19, 1970 when it arbitrarily, capriciously and in total disregard of the provisions of the Agreement removed work from the Scope of that Agreement which had heretofore always been by history, custom, tradition and practice assigned exclusively to employees of this class and craft.

(2) Carrier shall now be required to compensate J. L. Powell and/or his successors beginning August 19, 1970 and continuing on each work day thereafter for one hour each day at the penalty rate of Position No. 74, Train Clerk account violation of the Agreement.

(3) Carrier shall now be required to compensate J. M. Bates and/or his successors beginning August 19, 1970 and continuing on each work day thereafter Monday through Friday; also J. A. Battles and/or his successors for each Saturday and Sunday beginning August 22, 1970 for one hour and 30 minutes each day at the rate of Record Clerk Position No. 42 account violation of the Agreement.

OPINION OF BOARD: The claimants assert that their agreement was violated when, in August of 1970, approximately one (1) hour of clerical work was assigned to the third shift telegrapher who was employed at the same location as the claimants.

On December 1, 1969, some months prior to the occurrence giving rise to this claim, the then existing clerks and telegraphers' seniority rosters were combined under a Clerk-Telegrapher consolidation agreement. Consequently, only one Organization was involved when this claim arose.

Petitioner contends that: 1) the work was not assigned to fill out the telegrapher's assignment; 2) the consolidation agreement of December 1, 1969 does not authorize the transfer of work across craft lines; and 3) the disputed work has been exclusively and historically assigned to the clerks. Carrier contends that it is well established on this property that clerical work may be used to fill out the assignments of telegraphers and that none of the disputed work has been performed by telegraphers on overtime. Carrier also contends that "In the

negotiations culminating in the December 1, 1969 Agreement, it was understood and agreed that clerks could perform work theretofore performed by telegraphers and telegraphers could continue to fill out the hours of their assignments on clerical work." Neither of Carrier's contentions have been contradicted of record by the Petitioner.

As regards Petitioner's first contention, we find as fact on the whole record that the disputed work was assigned to fill out the telegrapher's assignment. On the crossing of craft lines, the record contains no evidence whatever on this subject so we find no merit in Petitioner's second contention. The requisite evidence is likewise lacking in regard to Petitioner's claim of exclusive performance of the disputed work. Prior Awards of this Division have held the scope rule of the Clerks' Agreement on this property to be general in nature. Awards 16356, 15695, 15394, and 14944 among others. The majority of recent Awards hold that in such a case, in order for employees to prevail on claims that work within the scope of their agreement has been improperly assigned to and performed by persons outside the Agreement, the employees must establish by a preponderance of the evidence that the disputed work has historically been performed exclusively by the complaining employees on a system-wide basis. (Award 19517, by the present Referee) On the present record we can only conclude that the Petitioner has not carried this burden of proof.

We come now to Carrier's contentions. In view of these contentions not being contradicted or challenged of record, we conclude that practice on this property permits the Carrier to assign the work as it did in this situation. Furthermore, it is well established by Awards of this Board that telegraphers may perform clerical work to fill out their assignments, even where telegraphers and clerks are covered by separate agreements. See Awards 615, 9926, and 13100 among others. And finally we observe that nowhere in the record does the Petitioner attempt to show that the past practice on the property was changed, or that the foregoing Awards were made inapplicable, by the consolidation agreement of December 1, 1969.

In view of the foregoing we shall 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 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

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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 June 1973.