

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20429
Docket Number CL-20447

David P. Twomey, Referee

(Brotherhood of Railway, Airline and Steamship
(Clerks, Freight Handlers, Express and
(Station Employees
PARTIES TO DISPUTE: (The Kansas City Southern Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-7434) that:

(1) Carrier violated and continues to violate the Scope Rule, Rule 1, of the current Clerks' Agreement and Article VIII of Mediation Agreement, Case No. A-8854, dated February 25, 1971, when, beginning April 17, 1972, Carrier caused CTC Operators (Centralized Traffic Control Operators) at Heavener, Oklahoma, to use IEM Machine installed in CTC Section of the office April 14, 1972, to perform clerical work exclusively theretofore performed by clerks at Heavener, Oklahoma, and identified as follows:

(a) Punch IEM cards on interchange cars to and from following railroads at the following stations;

Fort Smith, Arkansas	MoP Rwy. Co. - SLSF Rwy. Co.
Sallisaw, Oklahoma	MoP Rwy. Co.
Panama, Oklahoma	Texas and Pacific Rwy. Co.
Poteau, Oklahoma	SLSF Rwy. Co.
Howe, Oklahoma	Rock Island Rwy. Co.

(b) Punch IEM Demmurae cards for the following stations;

Fort Smith, Arkansas, Sallisaw, Oklahoma and Marble City, Oklahoma.

(c) Also, punching originating IBM Train Consist and Wheel Card for cars picked up by locals, operating in and out of Heavener, Oklahoma, i.e., Fort Smith Local, Sallisaw Local, FSVB, AW Local and South Local (five separate Locals).

(2) Carrier shall now compensate the following clerks and or their successor(s) for damages and damages to the Agreement, account of Carrier's violative action, on the following basis:

(a) C. E. Bain, Clerk, Heavener, Oklahoma, work week Monday through Friday, for five (5) hours and thirty (30) minutes at penalty (overtime) rate on April 17, 18, 19, 20, 21, 24, 25, 26, 27, 28; May 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 15, 16, 17, 18, 19, 22, 23, 24, 25, 26, 29, 30, 31; June 1, 2, 5, 6, 7, 8, 9, 12, 13, 14, 15, 16, 1972. Claim is for dates listed and subsequent dates until violation is corrected and Carrier is to consider this as a continuous claim for C. E. Bain and/or his successor(s).

(b) T. H. Johnston, Clerk, Heavener, Oklahoma, work week Wednesday through Sunday, for five (5) hours and thirty (30) minutes at penalty (overtime) rate on April 19, 20, 21, 22, 23, 26, 27, 28, 29, 30; May 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 14, 17, 18, 19, 20, 21, 24, 25, 26, 27, 28, 31; June 1, 2, 3, 4, 7, 8, 9, 10, 11, 14, 15, 16, 1972. Claim is for dates listed and subsequent dates until violation is corrected and Carrier is to consider this as a continuous claim for T. H. Johnston and/or his successor(s).

(c) L. W. Strickland, Clerk, Heavener, Oklahoma, work week Thursday through Monday (a seven-day worked position with no regular assigned relief on Tuesday, and as incumbent, is proper claimant), for five (5) hours and thirty (30) minutes at penalty (overtime) rate on April 17, 18, 20, 21, 22, 23, 24, 25, 27, 28, 29, 30; May 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18, 19, 20, 21, 22, 23, 25, 26, 27, 28, 29, 30; June 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 15, 16, 1972. Claim is for dates listed and subsequent dates until violation is corrected and Carrier is to consider this as a continuous claim for L. W. Strickland and/or his successor(s).

(d) L. A. Huckabee, Relief Clerk, Heavener, Oklahoma, work week Saturday through Wednesday, for five (5) hours and thirty (30) minutes at penalty (overtime) rate on April 17, 18, 19, 22, 23, 24, 25, 26, 29, 30; May 1, 2, 3, 6, 7, 8, 9, 10, 13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 27, 28, 29, 30, 31; June 3, 4, 5, 6, 7, 10, 11, 12, 13, 14, 1972. Claim is for dates listed and subsequent dates until violation is corrected and Carrier is to consider this as a continuous claim for L. A. Huckabee and/or his successor(s).

OPINION OF BOARD: Employees rely on two distinct contentions to support their claims. The Employees' first contention is that the Carrier violated and continues to violate the Scope Rule of the current Clerk's Agreement by requiring CTC Operators (now titled Telegraphers-Clerks) at Heavener, Oklahoma to use an IBM 1050 Machine installed in the CTC Section of the office to perform clerical work, which work was previously exclusively performed by clerks at Heavener, Oklahoma. The Employees second contention is that the Carrier's actions violated and continues to violate Article VIII of the Mediation Agreement, Case No. A-8854, dated February 25, 1971, dealing with consolidation of Clerk-Telegrapher work. We consider each of these contentions separately below.

The contention of a Scope Rule violation. The Employees rely on Scope Rule 1(b) which reads as follows:

"(b) Mechanical devices used in the performance of work ordinarily performed by employees subject to the scope of this agreement will be operated by employees covered by said agreement."

The Clerks' claim that Rule 1(b) reserves to employees covered by the Clerks Agreement the operation of mechanical devices to perform work ordinarily performed by such employees, by a showing that by history, custom and practice such work has been performed by the Clerks and was being performed by the Clerks at the time the Agreement was consummated.

In Awards 19286 and 15857 this Board has already decided that the Scope Rule here in question is general in nature and does not reserve specific work. This Board has frequently held that where the Scope Rule is general in nature, the right to specified work will be reserved to the Organization if the work was by history, custom and tradition performed exclusively by the Organization; but, resort to history, custom and tradition must be system-wide, with the burden of proof through competent evidence upon the Petitioner. See Awards 19800, 19517, 14279, 13580, 12787, 11526, 8207, among numerous other awards. The Petitioners in the case now before the Board have not alleged and certainly have not proven a system-wide practice that would support a claim under the above General Scope Rule Doctrine. Thus we must deny the claim based on Scope Rule.

Further support for denying the Employees' contentions based on the above-quoted Scope Rule may be found in Award 19286. In 19286, dealing with the same Scope Rule and the same Carrier, the Clerks contentions were denied. We quote from that opinion as follows:

"The Clerks, also filed a submission in this dispute alleging that the operation of the aforesaid IBM machines is work belonging to the Clerks.

The Clerks Scope Rule is very general in nature and does not define the work covered. We therefore must look to the work ordinarily performed by employees under the Scope of the Clerks' Agreement. In so doing we find that some of the work done on 1050 machines is generally done by Clerks while Telegraphers also operate the 1050 machines.

Carrier takes the position that 'while the work involved in this case is engaged in by Clerks represented by the ERAC it is not exclusively assigned to them.' In this assertion we concur."

On the Employees' contention that Article VIII of the February 25, 1971 Mediation Agreement was violated by the Carrier's actions, Article VIII reads in part:

"ARTICLE VIII - CONSOLIDATION OF CLERK-TELEGRAPHER WORK

Section 1. At the option of a carrier (emphasis supplied) as provided in Section 2(a) hereof, and in order to permit a carrier to make work assignments interchangeable between Clerks and Telegraphers, the separate scope rules of the Clerks and Telegraphers agreements will be jointly applicable to all Clerk and Telegrapher employees after the procedures in Section 2 have been complied with. . . .

Section 2.

(a) Subsequent to the date of this Agreement a carrier desiring to implement the provisions of Section 1 of this Agreement will notify the General Chairmen of the Clerks and Telegraphers of its desire, designating which rosters it desires to combine.

Section 9. If a Carrier combines work and/or functions performed by clerks and telegraphers prior to the date seniority rosters are combined, with the purpose or effect of depriving an employee of benefits provided for under Sections 6 and 7 of this Article, the benefits of Sections 6 and 7 of this Article shall apply to the employee as of the date when he is affected by such combination, provided seniority rosters are combined under this Article VIII. (Emphasis supplied).

The Board does not have the power to rewrite agreements. Article VIII, Section 1. states, "At the option of a carrier." The language is clear and unequivocal. This Board cannot make mandatory that which in the language of the parties is clearly optional.

Further support, other than the clear-cut language of Section 1, for the finding that Article VIII is optional, not mandatory, is found in Section 9. This section gives the remedy for a situation where a Carrier combines work prior to the date the seniority rosters are combined with the effect of depriving employees of certain benefits found in Sections 6 and 7 of Article VIII. The specified remedy of Section 9 is inapplicable however if the Carrier combines work under authority other than Article VIII, for a proviso to Section 9 allows for the Section 9 remedy only where "seniority rosters are combined under this Article VIII." It is clear from reading Section 9 coupled with Section 1 that the parties did not intend that Article VIII be the exclusive rule covering the combination of work involving telegraphers and clerks. Only when a Carrier exercises its option to combine work under Article VIII may the Carrier be bound by Article VIII.

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 Agreements were not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulsen
Executive Secretary

Dated at Chicago, Illinois, this 27th day of September 1974.

LABOR MEMBER'S DISSENT TO AWARD 20429
(Docket CL-20447)
(Referee Twomey)

Award 20429 is palpably in error because it permits the Carrier to combine Clerks' and Telegraphers' work at its option without following the procedures set out in Article VIII. We have no quarrel that the clearcut language of Section 1 is optional and not mandatory; but if the Carrier constructively exercises this option, it must do so in accordance with the bargain it made. This was not done, and the Award is in error.

I dissent.


J. C. Fletcher
10-4-74