

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20792  
Docket Number CL-20667

Joseph A. Sickles, Referee

(Brotherhood of Railway, Airline and Steamship  
( Clerks, Freight Handlers, Express and  
( Station Employees  
PARTIES TO DISPUTE: (  
(Burlington Northern Inc.

STATEMENT OF CLAIM: Claim of the Burlington Northern System Board of Adjustment (GL-7508) that:

1. Carrier violated the Working Agreement with an effective date of March 3, 1970, when, commencing on Wednesday, October 11, 1972, and continuing through Friday, October 13, 1972, it assigned to an official of the Company at the Dale Street Material Department, St. Paul, Minnesota, work which prior thereto was assigned to and performed by employees subject to the scope of the Agreement at that point.
2. Carrier shall now compensate Stock Clerk W. A. Scully for twelve (12) hours at the overtime rate for the period of October 11, 1972 through October 13, 1972, the days on which the preparation of these forms was performed.

OPINION OF BOARD: The Organization claims that Carrier assigned the work of performing certain routine clerical duties to an employee not subject to the scope of the Agreement. The work in question was the listing of Class 42 (material to be scrapped) on seventy-three (73) pages of Form 12927.

Although Claimant does not assert that clerks should assume the basic management decision process; nonetheless, it is urged that once those determinations are made, the Agreement requires that bargaining unit personnel prepare the form.

Carrier has suggested that the Organization altered its theory of violation at the eleventh hour and it raises certain questions of conformity with the processes of the Railway Labor Act. Be that as it may, the Carrier has also raised - as a defense - an allegation that Claimant has failed to provide proof required to satisfy the "exclusivity" test, and we feel that said defense is meritorious.

The Scope Rule in question is general in nature and under long established precedents of this Board, in order to prevail, Claimant must demonstrate that the work in question has been performed, under the rule, by history, custom and practice, on a systemwide basis to the exclusion of others.

During the handling of the matter, the Organization recognized that obligation and made certain conclusionary statements to that effect, and finally submitted statements which specified that the work in question has been part of the clerks' duties. As we read the three (3) statements, we question that they establish "exclusivity" as that term is used in the decisions of this Board. It is not enough to show solely that clerks have performed the work. The moving party must also show that other individuals have refrained from performing the duties; especially in a case such as this where Carrier has raised the issue in a timely manner, and has submitted statements which sharply dispute the facts necessary to establish "exclusivity."

Upon a review of the entire record, we are unable to conclude that Claimant has satisfied the burden of proof and accordingly, we will dismiss 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 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

That the claim be dismissed.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

A. W. Paulsen  
Executive Secretary

Dated at Chicago, Illinois, this 31st day of July 1975.