NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20955
Docket Number CL-20849

Louis Norris, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes
(Southern Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-7675) that:

(a) Carrier violated the Agreement at Atlanta, Georgia, when it permitted Yardmasters at Industry Yard, East Point, Georgia, to perform schedule clerical work on each date listed below and during the times shown.

(b) Carrier shall be required to compensate each listed claimant for eight hours' pay at the rate of time and one-half for each date shown opposite the name of each claimant as listed hereafter:

CLAIM NO. 1

7:00 a.m. to 3:00 p.m. shift:

G. H. O'Neal	-	December 25 and 26;
L. C. Stanfield	-	December 2, 3, 6, 9, 10, 13, 16, 17, 20, 23, 24, 27, 30 and 31;
C. D. McClinton	-	December 1;
J. W. Pullen	-	December 7, 8, 14, 15, 21, 22, 28 and 29;
W. O. Rakestraw	-	December 4, 5, 11, 12, 18 and 19;

3:00 p.m. to 11:00 p.m. shift:

G. H. O'Neal	-	December 25 and 26;
L. C. Stanfield	-	December 4, 5, 6 and 27;
C. D. McClinton	-	December 1, 7, 8, 14, 15, 21, 22, 28 and 29;
C. E. Robinson	-	December 2, 3, 9, 10, 16, 17, 23, 24, 30 and 31:
W. O. Rakestraw	-	December 11, 12, 13, 18, 19 and 20;

11:00 p.m. to 7:00 a.m. shift:

G. H. O'Neal	-	December 22, 23, 24, 27, 28, 29, 30 and 31;
L. C. Stanfield	-	December 4, 5, 11, 12, 18, 19, 25 and 26;
C. D. McClinton	-	December 2, 3, 6, 9, 10, 16 and 17;
C. E. Robinson	-	December 13 and 20;
J. W. Pullen	-	December 1, 7, 8, 14, 15 and 21, 1971.

CLAIM NO. 2

7:00 a.m. to 3:00 p.m. shift:

G. H. O'Neal	-	January 1 and 2;
L. C. Stanfield	-	January 3, 13, 14, 17, 20, 21, 24, 27 and 28;
C. D. McClinton	-	January 8, 9, 10 and 31;
C. E. Robinson	-	January 4, 5, 6, 7 and 11;
J. W. Pullen	-	January 12, 18, 19, 25 and 26;
W. L. Spade	-	January 15, 16, 22, 23, 29 and 30;

3:00 p.m. to 11:00 p.m. shift:

G. H. O'Neal	-	January 1, 2 and 3;
L. C. Stanfield	-	January 6, 7, 8, 9, 10 and 31;
C. D. McClinton	-	January 4, 5, 11, 12, 18, 19, 25 and 26;
C. E. Robinson	-	January 13, 14, 20, 21, 27 and 28;
W. L. Spade	-	January 15, 16, 17, 22, 23, 24, 29, and 30;

11:00 p.m. to 7:00 a.m. shift:

L. C. Stanfield	-	January 1, 2, 8, 9, 15, 16, 22, 23, 29 and 30;
C. D. McClinton	-	January 6, 7, 13, 14, 17, 20, 21, 24, 27 and 28;
C. E. Robinson	-	January 3, 10 and 31;
J. W. Pullen	-	January 4, 5, 11, 12, 18, 19, 25, and 26, 1972.

CLAIM NO. 3

7:00 a.m. to 3:00 p.m. shift:

G. H. O'Neal	-	May 6, 7, 20, 21, 27 and 28;
L. C. Stanfield	-	May 1, 2, 3, 12, 13, 14, 15, 18 and 19;
C. D. McClinton	-	May 4, 5, 8 and 22;
J. W. Pullen	-	May 9, 10, 16, 17, 23 and 30;
C. E. Robinson	-	May 11, 24, 25 and 31;
W. P. Darby	-	May 26 and 29;

3:00 p.m. to 11:00 p.m. shift:

G. H. O'Neal	-	May 1, 5, 8, 11, 12, 13, 14, 20, 26, 27, 28 and 29;
L. C. Stanfield	-	May 6, 7 and 15;
C. D. McClinton	-	May 2, 3, 9, 10, 16, 23, 24, 30 and 31;

C. E. Robinson	-	May 4, 12, 18, 19 and 25;
W. P. Darby	-	May 21 and 22;

11:00 p.m. to 7:00 a.m. shift:

G. H. O'Neal	-	May 2, 3, 16, 18, 19 and 25;
L. C. Stanfield	-	May 6, 7, 13 and 20;
C. D. McClinton	-	May 1, 11, 12, 14, 15, 22, 24, 26, 29 and 30;
J. W. Pullen	-	May 23 and 31;
C. E. Robinson	-	May 4, 5, 8, 9, 10 and 17;
W. P. Darby	-	May 21, 27 and 28, 1972.

CLAIM NO. 4

7:00 a.m. to 3:00 p.m. shift:

G. H. O'Neal	-	June 17, 18, 24 and 25;
L. C. Stanfield	-	June 3, 4, 5, 6, 10, 11, 12, 13, 14, 19, 20, 21, 22, 23, 26, 27 and 28;
C. E. Robinson	-	June 1, 2, 8, 9, 15, 16, 29 and 30;
J. W. Pullen	-	June 7;

3:00 p.m. to 11:00 p.m. shift:

G. H. O'Neal	-	June 1, 12, 15, 16, 17, 18, 19, 22, 23, 24, 25, 26, 29 and 30;
C. D. McClinton	-	June 6, 7, 13, 14, 20, 21, 27 and 28;
C. E. Robinson	-	June 2, 3, 4, 5, 8, 9, 10 and 11;

11:00 p.m. to 7:00 a.m. shift:

G. H. O'Neal	-	June 28;
L. C. Stanfield	-	June 3, 4, 10, 11, 17, 18, 24 and 28;
C. D. McClinton	-	June 1, 2, 5, 8, 9, 12, 15, 16, 19, 20, 21, 22, 23, 27, 29 and 30;
J. W. Pullen	-	June 6, 7, 13 and 14, 1972.

CLAIM NO. 5

7:00 a.m. to 3:00 p.m. shift:

G. H. O'Neal	-	July 1, 2, 8, 9, 15, 16, 22, 23, 29 and 30;
L. C. Stanfield	-	July 3, 5, 10, 12, 13, 14, 17, 19, 20, 24 and 28;
C. E. Robinson	-	July 6, 7, 21, 27 and 31;
J. W. Pullen	-	July 4, 11, 18, 25 and 26;

3:00 p.m. to 11:00 p.m. shift:

G. H. O'Neal	-	July 1, 2, 3, 6, 8, 15, 16, 22, 23, 24, 27, 29, 30 and 31:
L. C. Stanfield	-	July 7, 9, 10 and 17;
C. D. McClinton	-	July 4, 5, 11, 12, 18, 19, 25 and 26;
C. E. Robinson	-	July 13, 14, 20, 21 and 28;

11:00 p.m. to 7:00 a.m. shift:

L. C. Stanfield	-	July 1, 2, 8, 9, 15, 16, 22 and 23;
C. D. McClinton	-	July 3, 4, 6, 7, 10, 11, 13, 14, 17, 18, 24, 25, 27, 29, 30 and 31;
C. E. Robinson	-	July 20 and 21;
J. W. Pullen	-	July 5, 12, 19 and 26, 1972.

OPINION OF BOARD: This dispute involves five claims all identical with the exception of the names of the Claimants and the dates claimed. The documents submitted as Exhibits apply to all the claims. Claimants are all regularly assigned clerical employes covered by the Clerks' Agreement. Petitioner contends that Carrier violated the Clerks' Agreement by permitting Yardmasters at East Point, Georgia, to perform schedule clerical work on various dates and specific shift times from December 1, 1971 through July 28, 1972. Demand is made for eight hours pay at time and one-half to be paid to each Claimant for each date set forth in the Statement of Claim.

This is basically a jurisdictional dispute between the Clerks and the Yardmasters, each claiming exclusive rights to the work here involved. Clearly, the Yardmasters Organization is an interested party. Accordingly, pursuant to invitation of the Board, the Yardmasters filed its written submission, which is now part of the record before us.

Hence, due process having been observed and complied with, we deem it to be within the jurisdiction of this Board to resolve this dispute procedurally and on its merits, with binding effect upon both Organizations and upon Carrier. The foregoing conclusion on the principle of "due process" is fully supported in Award No. 1, P.L.B. No. 964, citing T.-C.E.U. vs. Union Pacific R. Co., 385 U.S. 157, (U.S. Supreme Court, 1966).

Referee hearing was held as requested by the principals, at which Petitioner and Carrier representatives appeared and argued the issues. The Yardmasters did not appear, having "waived appearance" by letter of December 11, 1975.

Carrier raises ten specific points of issue, to each of which Petitioner has replied in detail. The Docket before us consists of some 324 pages, with numerous precedents cited by each of the principals. We stress the foregoing facts to demonstrate that the issues here involved have been fully explored and analyzed in detail at considerable length.

The parties are in agreement that there have been no changes in the clerical force or the yardmaster force at East Point during the past several years, nor has there been any change during this time in the manner in which work has been performed at that location by clerks and yardmasters.

Procedurally, Carrier contends that the instant claims were not timely filed and are therefore barred. The record does not show that this issue was raised in the handling on the property. It, therefore, cannot be properly raised for the first time before this Board.

Carrier raises the further procedural objection that the claims are vague and indefinite and barred for this reason. However, sufficient detail is spelled out in the claims to properly apprise Carrier of the nature of the disputed work and the gravamen of each claim. Names of Claimants and specific dates are shown, the disputed work is identified, and the yardmasters on duty on each shift are known to Carrier. There is some merit to Carrier's assertion that the claims fail to state what specific work was performed by a specific yardmaster at a specific time. However, these aspects are mechanical in nature and are capable of being resolved practically by some rule of thumb percentage formula agreed to by the principals.

On balance, therefore, we do not sustain Carrier's objection on this issue, nor do we consider it of sufficient impact to deter the Board from resolution of this dispute on its merits.

Petitioner, on its part, contends that various Exhibits attached to Carrier's submission constitute "new matter" not raised on the property and, therefore, not properly before the Board at this stage of the appellate process. These Exhibits fall into two categories: (1) a detailed listing for purpose of comparison of similar Scope Rules contained in prior Agreements; and (2) copies of Section 6 notices of proposed amendments to the Agreement filed by Organization in the past.

We sustain Petitioner's objection to the second set of Exhibits since these matters were never raised on the property and do, in fact, constitute "new matter" to which Petitioner had no opportunity to reply.

See Awards 19101, 20064, 20121, 20255 and 20468, among many others.

We do not, however, sustain Petitioner's objection to the first set of Exhibits. The most recent Agreement now before us, executed between Petitioner and Carrier, is dated May 1, 1973. The confronting claims run from December 1, 1971 to July 28, 1972. The Agreement quoted in the Docket bears effective date of October 1, 1938, revised as of June 1, 1952 and March 1, 1972 to include all changes since 1938. Moreover, there is a past practice going back some years and to which the parties have made reference. We are therefore constrained to review the history of the Scope Rule in order to determine its applicability to all of the facts here involved. Thus, the Scope Rule contained in prior Agreements is of paramount importance to this dispute and is properly before the Board. The Petitioner cannot be heard to complain because it had no opportunity to "reply"; no reply is necessary to quoted portions of prior Agreements negotiated by and agreed to by the principals and which speak for themselves.

We proceed, therefore, to the merits of this dispute. Stripped of all irrelevancies, the basic issue before us is Carrier's contention that the Scope Rule of the Clerks' Agreement being general in nature, Petitioner has the burden of establishing that the disputed work is exlusively theirs to perform. This, Carrier contends, Petitioner has failed to do.

Both Agreements are now before the Board, the Clerks' Agreement and the Yardmasters' Agreement. Careful review and analysis of the Scope Rule of the Clerks' Agreement, which is quoted at length in the record, reveals no specific provision or language which exclusively reserves the disputed work to the Clerks. Nor does the Agreement otherwise contain any exclusive "work reservation rule". We find, therefore, that the Clerks Scope Rule is general in nature. Additionally, examination of the Scope Rule contained in prior Agreements evidences the fact that said Scope Rule has remained basically unchanged.

Our conclusion as to the "generality" and "non-exclusivity" of the Clerks' Agreement has been confirmed in many prior Awards of this Board.

See Awards 13605 (Hamilton), 13859 (Mesigh), 14050 (Bailer), 14593 and 19824 (Dorsey), 14695 (Ives) 16371 (Zack), 17063 and 18061 (Dugan), 19187 (Cull), 19800 (Blackwell), and most recently, 19894 and 19923 (Lieberman) and 20791 (Sickles), among many others.

Prior Awards cited by Petitioner are not to the contrary. Thus, for example, Awards 180, 425, 458, 751, 754, and 1551 are entirely unrelated to the issues of this dispute. Awards 2553, 19011 and 18804 are somewhat in point but do not speak for the overwhelming weight of authority as indicated above.

Similarly, the Scope Rule of the Yardmasters' Agreement is general in nature; nor does the body of the Agreement at any point contain any exclusive work reservation rule. In fact, the only language in the Agreement dealing

directly with its Scope is contained in "SCOPE-RULE 1(a)" which reads as follows:

> "(a) This agreement becomes effective July 21, 1948, and applies to Yardmasters, Assistant Yardmasters and Relief Yardmasters while so employed."

The remaining portion of Rule "1" contains provisions governing "hours", "rest day" and exclusion of certain positions; but nothing on exclusive reservation of particular work to the Yardmasters. This conclusion as to "generality" and "non-exclusivity" of the Yardmasters' Agreement is also confirmed in prior Awards. See, for example, Awards 2473 (Dorsey), 2522 (Weston), and most recently 3252 (Zumas - 4th Div. - December 11, 1975).

Accordingly, we find that both the Clerks' and the Yardmasters' Agreements are general in nature, neither Agreement containing any rule exclusively reserving the disputed work to their respective members.

In these circumstances, we have held repeatedly that where the Scope Rule is general in nature, as is the case here as to both Scope Rules, the burden of proof is on the Organization claiming the work to establish by substantial probative evidence that the employes it represents have performed such work historically, traditionally and exclusively, and system-wide.

See Awards 10389 (Dugan), 13579 (Wolf), 15383 (Ives), 15539 (McGovern), 16609 (Devine), 18471 (O'Brien), 18935 (Cull), 19576 (Lieberman) and 19969 (Roadley), among a host of others.

To the same effect, see Awards 13605 through 20791, cited above.

Neither Organization has sustained such burden of proof; nor can we conclude that the principle of "exclusivity" has been successfully established by either of the contesting Organizations.

Accordingly, in view of the foregoing, and particularly in view of our findings in connection with the respective Scope Rules, the past practice at this location for the past several years becomes of paramount importance and is controlling upon this dispute.

See Awards 15503 (House), 16819 (Brown), 19702 (Blackwell), and 3252 (Zumas - 4th Div.), among others.

We conclude on the basis of the record evidence, therefore, that Petitioner has failed to establish probatively that the disputed work was reserved exclusively to the Claimants under the Clerks' Agreement. Hence, no violation of the Agreement having been established, we find no basis upon which to sustain the claims.

Finally, in view of the foregoing specific findings on the merits, we do not rule on the relevancy of the various employe statements submitted as Exhibits (which are basically self-serving in any event); nor do we rule on the issue of whether or not the disputed work is "related and incidental to the supervisory work of the Yardmasters". The latter issue is of peripheral significance and not controlling here.

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 Employes involved in this dispute are respectively Carrier and Employes 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

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A.W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this **13th** day of **February** 1976.