

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21437
Docket Number CL-21124

James C. McBrearty, Referee

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

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-7793) that:

1. Carrier violated the Clerks' Agreement, which became effective March 1, 1973, when on May 11, 1973, it authorized an employe not covered by the Agreement to act as Agent for the Texas and Pacific Railway Company at Simmesport, Louisiana. (Carrier's File 302-124)

2. Carrier shall now be required to compensate the senior qualified furloughed employe, A. M. Farris, and/or his successor for eight hours at the pro rata rate of \$5.1508 for May 11, 1973 and continuing for each date thereafter until this claim is allowed and the violation corrected.

OPINION OF BOARD: The Employes furnished evidence indicating that in December 1941 the General Chairman of the Telegraphers' Organization and the Carrier agreed to apply the conditions of the Washington Agreement of 1936 to employes affected by the consolidation of the T&P and L&A stations at Simmesport, Louisiana. The consolidation of the T&P and L&A stations at Simmesport became effective January 1, 1942; thereafter all station service was performed by employes of the L&A.

On August 28, 1972, the L&A filed application with the Louisiana Public Service Commission to close Simmesport. Authority was granted and the L&A station was closed effective with the close of business on May 11, 1973. Preliminary to the closing of the L&A station at Simmesport, the Carrier contacted the two businesses, Roy O. Martin Lumber Company and Riverland Hardwood Company, Inc., and notified them--in addition to posting a notice--that effective May 14, 1973, patrons would contact the T&P agent at Bunkie, Louisiana, for information relating to carload shipments, and the T&P agent at Addis, Louisiana, for information relating to less than carload shipments.

The only regular customer Carrier had at Simmesport was the Riverland Hardwood Company, Inc., which shipped approximately 15 carloads of freight per month. The Martin Lumber Company was not shipping over this Carrier at that time or at the present time. Ms. Natalie Couvillion, an employe of the Riverland Hardwood Company, prepared bills of lading covering rail shipments for Riverland; so

she was contacted and subsequently agreed to sign the bills of lading as a representative of the Carrier in order to meet Riverland's bill of lading requirements. For this accommodation, she was designated a Bill of Lading Agent, and paid a fee of \$0.50 per bill of lading up to a maximum of \$10.00 per month, because according to Carrier, the signing is purely a perfunctory measure since Carrier's liability is incurred at the time the shipment is picked up on instructions of the shipper without regard to whether bill of lading has been signed by a Carrier representative. Carrier states that a generous estimate of Ms. Couvillion's total time consumed (signing her name to 15 bills of lading as the Carrier's representative) would amount to no more than fifteen minutes per month.

Petitioner argues that the work involved is work properly coming under the Scope and operation of the Telegraphers' Agreement.

The pertinent part of the Scope Rule cited by Petitioner states:

"SCOPE
Rule 1

These Rules shall govern the hours of service and working conditions of the following employes who come within and under the craft or class of clerical, office, station and materials department employes, such as:

Agents, telegraphers, towermen, clerical workers, telephone switchboard operators, operators of office or station mechanical equipment used in the performance of clerical work, and other office, station and materials department employes as more fully set forth below:

Employes engaged in writing and calculating incident to keeping records and accounts, writing and transcribing letters, making bills, reports and statements, and similar work and to the operation of office mechanical equipment such as typewriters, calculating, bookkeeping, accounting, key punch, tabulating, photostat and recordak machines, dictaphones and similar equipment used in the performance of clerical work, including agency and station functions, warehouse foremen, checkers,

"talley men and deliverymen, ticket sellers, car distributors, yard checkers, office boys, office girls, messengers, waybill and tag filers and assorters;

Operators of office machines or equipment devices such as devices for perforating, addressing envelopes, numbering claims and other papers; mimeographing and duplicating machines and machines used to perform work of a like nature;

Yard, train and engine crew callers; station helpers, office, station, warehouse and storehouse watchmen (except licensed police officers);

Materials Department employes, such as material supervisors (except Texas and Pacific) general foreman, material foremen, material handlers and employes employed in and around material warehouses and storage docks where Materials Department supplies are kept.

Office and station janitors, porters, elevator operators, laborers employed in and around stations and warehouses.

Caboose supplymen on former Texas & Louisiana Lines, North Little Rock, Mineola and Arlington.

It is recognized and agreed that all of the positions referred to in this rule belong to and will be assigned to employes holding seniority rights and working under the Clerks' Agreement, except as specifically provided herein.

NOTE 1: Where payroll title does not conform to the service performed on a given position, such position shall be titled commensurate with the duties attaching.

NOTE 2: Titles or positions not shown above which appeared in previous agreements are considered subject to the provisions of this agreement. It is not intended to change existing practices with respect to the duties attaching to said positions.

"Exceptions:

1. This agreement shall not apply to:

- (a) Individuals where amounts of less than seventy dollars (\$70.00) per month are paid for special service.

Nothing in these rules shall be construed to restrict the work of custodians, caretakers or other similar employes that may be employed to perform such duties as keeping the depot properly heated and lighted for the accomodation of passengers, handling U. S. mail and for the protection of the company's property, but they shall not be required to perform work ordinarily handled by the local agent such as billing freight, collecting revenue and signing bills of lading, etc.

* * * * *

The Board finds that the above-cited Scope Rule is general in nature, and does not reserve the work of merely signing bills exclusively to employes covered under the Clerks' Agreement.

Under these circumstances it is necessary to determine whether by history, custom, and system-wide past practice that work is reserved exclusively to employes under the Clerks' Agreement.

It is abundantly clear from the handling of this claim on the property, as well as from the arguments of the parties, that Petitioner did not establish by a preponderance of probative evidence that this work belongs exclusively to employes covered by the Clerks' Agreement.

Carrier repeatedly reminded Petitioner that many persons outside the coverage of the Clerks' Agreement have signed bills of lading. Such persons included Traffic Representatives (now referred to as Sales Representatives), Conductors, and Yardmasters.

Petitioner did not dispute Carrier's contentions except to note that in the past bills of lading were at least signed by other employes of the Carrier, and not by full-time employes of other companies.

However, such argument is not controlling, because Petitioner has failed to provide any evidence that the signing of bills was performed system-wide, exclusively, historically, and customarily by employes under the Clerks' Agreement. That is what must be controlling. In view of Petitioner's failure to meet its burden of proof, the Claim must be denied.

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 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

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulsen
Executive Secretary

Dated at Chicago, Illinois, this 28th day of February 1977.


LABOR MEMBER'S DISSENT
TO
AWARD 21437 (Docket CL-21124)
(Referee McBrearty)

The mental gymnastics of Referee McBrearty and the Majority in authoring a denial decision here would qualify for Olympic Gold if the Games included such events. The award cites the Scope Rule with its exceptions, including the "\$70.00" part-time exception which obviously applies to the newly-established part-time \$10.00 per month "bill of lading agent," and also quotes the parties' agreement that "they /individuals paid less than \$70.00 per month7 shall not be required to perform work ordinarily handled by the local agent such as billing freight, collecting revenue and signing bills of lading." (Interpolation and underscoring added.) The Majority then finds (without even smiling, I presume) that the rule "does not reserve the work of merely signing bills exclusively to employes covered under the Clerks' Agreement." Even the addleminded would have no difficulty understanding such gross inconsistencies.

The only work function involved in this award was signing bills of lading, performed by an individual classified as a "bill of lading agent," for which the Carrier allowed a maximum of \$10.00 per month. The parties have agreed that

under certain circumstances the Carrier is permitted to pay individuals not covered by the agreement up to \$70.00 per month for certain special services, agreeing further that signing bills of lading will not be included within the exception. Even a simpleton should have no trouble understanding that if certain functions were included within the \$70.00 exception and signing bills of lading was specifically excluded therefrom, that the Carrier violated the agreement when such work was given to an individual performing service under the \$70.00 exception.

The award is palpably in error and requires vigorous dissent.


LABOR MEMBER