

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21933  
Docket Number CL-21976

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and  
( Steamship Clerks, Freight Handlers,  
( Express and Station Employees  
(  
(The Lake Terminal Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood  
GL-8322, that:

1. The Carrier violated the effective Clerks' Agreement when on December 9 and 29, 1975, it required and/or permitted an employee not covered by the scope of the Agreement to perform work reserved exclusively for employees covered thereby;

2. The Carrier shall now compensate the first out clerk for eight (8) hours' pay at the pro rata rate of a yard clerk position for each of dates December 9 and 29, 1975.

OPINION OF BOARD: The Employees assert that on December 9 and December 29, 1975, an Assistant Trainmaster performed track checking work in violation of the Scope Rule:

"These rules shall govern the hours of service and working conditions of all employees engaged in the work of the craft or class of clerical, office, station and storehouse employees, subject to such modifications as are included herein. Positions or work coming within the scope of this agreement belong to the employees covered thereby, and nothing in this agreement shall be construed to permit the removal of positions or work from the application of these rules, except by agreement between the parties signatory hereto."

Carrier asserts that (1) the wheel report form (which is used by several classes of employees, not solely by clerks) was used to record the yard check and (2) switching orders "which is involved in the instant dispute, was historically completed by others besides clerks." Those assertions, which suggest a test of system-wide exclusivity, we feel, are misplaced.

Under the cited "positions or work" scope rule, all work performed under the agreement is preserved to the Organization until it is negotiated out. See Award 21382. Thus, we feel that the question presented is controlled by the function of work performed, not the form used. Checking of tracks is a function assigned to clerks and, thus, the work performed on December 9 and 29, 1975 resulted in a violation.

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 Agreement was violated.

A W A R D

Claim sustained.



NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: A. W. Pauls  
Executive Secretary

Dated at Chicago, Illinois, this 28th day of February 1978.