

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21980
Docket Number CL-21624

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employees
(
(Seaboard Coast Line Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-8097) that:

1. Carrier violated Rule 1, and other provisions of the current Agreement(s), July 5, 6, 7, 8, 9, 10, 11, 12, 13 and 15, 1974, when it permitted and required Herder H. D. Whitfield, an employee not covered by the Agreement and holding no seniority thereunder, Savannah, Georgia to transport train and engine crews; switch engine crews and clerks from one end of yard to the other end. Messenger switch list or track checks, waybills, weight scale tickets to crews on the north or south end of yard as directed by the Yardmaster.

2. (a) Carrier shall be required to compensate Clerk J. Keith, Jr., one (1) day's pay, eight (8) hours at one and one-half times the pro rata rate of position assigned July 6 and 13, 1974, for the violation set forth above.

(b) Carrier shall be required to compensate Clerk W. L. Aycock, Jr., one (1) day's pay, eight (8) hours at one and one-half times the pro rata rate of position assigned July 7, 8, 10, 11 and 15, 1974, for the violation set forth above.

(c) Carrier shall be required to compensate Clerk E. H. Futch, one (1) day's pay, eight (8) hours at one and one-half times the pro rata rate of position assigned July 5 and 12, 1974, for the violation set forth above.

(d) Carrier shall be required to compensate Clerk R. M. Warren, one (1) day's pay, eight (8) hours at one and one-half times the pro rata rate of position assigned July 9 and 10, 1974, for the violation set forth above.

OPINION OF BOARD: This dispute involves the transportation of train and engine crews, other employees and various documents from one point in the Yards in Savannah, Georgia to another point in the Yard, at the direction of the Yardmaster. The work in question was done by a Herder, an employee not covered by the Clerk's Agreement.

Petitioner relies principally on the Scope Rule of the Agreement in its arguments. That rule provides:

"RULE 1 - Scope

"(a) These rules shall govern the hours of service and working conditions of employees engaged in the work of the class or craft of office, station and storehouse employees as represented by the Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees, subject to the exceptions noted in Addendum No. 1.

"Employees who regularly perform the writing and calculating incident to keeping records and accounts, writing and transcribing letters, bills, statements and similar work, including stockmen, counter men, OS&D clerks, warehouse and storehouse foremen, checkers, stenographers, ticket clerks, ticket office employees; crew clerks, crew callers, also those employed in the operation of office mechanical devices in connection with such duties and work such as comptometer operators, I.B.M. and key punch operators, and other office and station employees, such as office boys, messengers, train announcers, gate-men, certain baggage and parcel room employees and telephone switchboard operators.

"Employees employed in and around stations, storehouses, warehouses, offices, scrapdocks, and transfers to perform service such as laborers, porters, janitors, cleaners, coopers, sealers, truckers, stowers, freight handlers, callers, scalers; certain baggage, mail and parcel room employees, red caps, maids; crane operators, automotive power truck or tractor operators; laborers who are used to close doors, bleed air, transfer and adjust overloads and bad order cars or to clean freight equipment on yards or at agencies; and non-clerical employees at phosphate elevators, not including stevedore duties at Port Tampa elevator.

"(b) All exceptions to the foregoing appear in Addendum No. 1."

Petitioner cites numerous awards dealing with transfers of work or abolishments of positions in support of its arguments. The essence of the argument presented by the Organization is that the inclusion of "messenger" in the Scope Rule also must include messenger work and that such work cannot be performed by other crafts or classes of employees without frustrating the purposes of the Agreement.

Carrier states that the work performed by the Herder in this dispute has been performed by that classification for over twenty five years. Further, Carrier alleges that similar work on other points on the property has been performed not only by clerks but by yardmasters, shop employees, yard employees, taxi companies and contract bus services. Carrier argues that the Messenger classification has no exclusive right to perform the type of work in dispute.

In the first instance, there was no transfer of work or abolishment of positions in this dispute. It is quite clear that Carrier's argument has substantial weight in that many classes of employees have performed the work in question. The Scope Rule is general in nature and the burden of proving exclusivity is upon Petitioner; that burden has not been met in this case.

The Organization's argument before this Board attacks the legitimacy of the exclusivity doctrine, among other points. Ten years ago this Board discussed the exclusivity doctrine, in Award 16550 (Dorsey), stating:

"As we have so often said the burden which a Petitioner bears to satisfy the principles is harsh. However, the many years of ancestry of the principles must be honored in the interest of uniformity and stabilization throughout the industry. Be there any who find the principles repugnant - and we know there are some - their remedy lies in collective bargaining."

The principle cited in Award 16550 is still sound. We must follow the case law of this Board in the application of a general Scope Rule relating to an Organization's claim to exclusive right to certain work.

In the case before us the Petitioner has failed to provide evidence that the work of the messenger herein in dispute has been performed historically, customarily and exclusively by employees under the agreement. Consequently, the Claim must be dismissed for lack of proof.

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 Petitioner has failed to meet its burden of proof.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 31st day of March 1978.

