

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23053
Docket Number CL-22974

George S. Roukis, Referee

PARTIES TO DISPUTE: { Brotherhood of Railway, Airline & Steamship Clerks,
Freight Handlers, Express and Station Employees
{ The Chesapeake and Ohio Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-8834) that:

(a) The Carrier violated Rule 1 and others of the Clerical Agreement on February 13, 18, 28, 29, March 1, 2, 8, 9, 10(2), 11, 12, 13, 14, 15, 16, 17, 18, 20, 21, and 23, 1972, when it assigned clerical duties, that of delivering switch lists to Car Retarder Operators in Hump Towers, to employees (Trainmen) not covered by the Clerical Agreement.

(b) As a result of this violation Claimants listed below are to be allowed 8 hours pay at the pro rata rate for dates and times indicated:

Gerald Vondron	Feb. 13, 1972	4 pm - 12 mid.
E. L. Smith	Feb. 18, 1972	4 pm - 12 mid.
Jerome Bell	Feb. 28, 1972	12 mid. - 8 am
G. Cousino	Feb. 29, 1972	12 mid. - 8 am
Theresa Nye	Mar. 1, 1972	12 mid. - 8 am
J. N. Shrewsbury	Mar. 2, 1972	12 mid. - 8 am
M. Bowling	Mar. 8, 1972	12 mid. - 8 am
Jerome Bell	Mar. 8, 1972	12 mid. - 8 am
M. Bowling	Mar. 10, 1972	12 mid. - 8 am
M. Bowling	Mar. 10, 1972	4 pm - 12 mid.
Gerald Vondron	Mar. 11, 1972	12 mid. - 8 am
M. Bowling	Mar. 12, 1972	12 mid. - 8 am
Gerald Vondron	Mar. 13, 1972	12 mid. - 8 am
W. L. Horner, Jr.	Mar. 14, 1972	12 mid. - 8 am
M. Bowling	Mar. 15, 1972	12 mid. - 8 am
M. Bowling	Mar. 16, 1972	12 mid. - 8 am
P. Rae	Mar. 17, 1972	12 mid. - 8 am
W. Harrison	Mar. 20, 1972	12 mid. - 8 am
Theresa Nye	Mar. 21, 1972	12 mid. - 8 am
P. Rae	Mar. 23, 1972	12 mid. - 8 am

(c) Clerk H. Kreskie to be allowed 8 hours pay at the punitive rate for violation that occurred on March 18, 1972 between the hours of 12 midnight and 8 a.m.

OPINION OF BOARD: Claimants contend that Carrier violated Rule 1 (Scope Rule) and others of the Clerical Agreement when it required trainmen, not covered by the Agreement to deliver switch lists to Car Retarder Operators in Hump Towers on the claimed dates.

In the Organization letter dated, April 10, 1972, it noted that in similar instances when the pneumatic tube systems were inoperative between Walbridge IBM room and the Hump or the Hump to Eastbound Yard Office, clerical personnel were exclusively used to transport switch lists, waybills, etc.

Carrier, contrariwise, disputes this position and contends that other crafts additionally performed the work in question. It argues that the use of the pneumatic tube by inserting capsules therein was not exclusively assigned to the clerks or the task of delivering switch lists when the tube system was down.

In our review of the case, particularly the chronology of assignments both before and after the pneumatic tube system was adopted, we do not find that its use was exclusively reserved to the clerks. We concur with Claimants, that the work of transporting waybills to and from trains exclusively belongs to the clerical employee, as per the explicit understandings of the June 16, 1961 Coordination Agreement, but the issue before us does not involve this type of work.

In the instant dispute, the claim as originally filed and progressed on the property pertained to the delivery of switch lists to Car Retarder Operators in Hump Towers. Thus the pivotal question before us is whether this work exclusively accrued to the Clerks.

In Award No. 10 of Public Law Board No. 1324, which we believe is conceptually persuasive, the Claimants in that dispute, who were Yardmen, represented by the United Transportation Union, were required by Hump Yardmasters to deliver switch lists, bids and time slips from the Hump Yardmasters offices to various towers because the pneumatic tube system was inoperative. The Yardmen did not argue work exclusivity, but instead asserted that the Basic Day Rule and Article 16 of their Agreement required extra compensation for double duty work. The PLB did not address the question of exclusivity, but found that the Yardmen delivered switch lists, etc. when the pneumatic tube system broke down. In the case before us, Claimants argue work exclusivity, but our analysis of the record does not

support this conclusion. To be sure, the clerks delivered switch lists between the above stated geographical points, and operated and used the pneumatic tube system, but so did the trainmen and yardmen perform this task. We do not find, moreover, that the Scope Rule extended such exclusivity or that the employees were able to demonstrate by reference to history and custom that the work at the pneumatic tube situs was performed exclusively by the clerks. We find that it was performed by several other employee classifications. On the record then, we are constrained to deny 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 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 not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 14th day of November 1980.