

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23182
Docket Number CL-23113

George S. Roukis, Referee

PARTIES TO DISPUTE:

{ Brotherhood of Railway, Airline and Steamship Clerks,
Freight Handlers, Express and Station Employees
{ Louisville and Nashville Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-8868) that:

1. Carrier violated the Agreement when, on August 16, 17, 18 and 22, 1979 and continuing thereafter it required and/or permitted Supervisor A. J. Kremer to perform duties assigned to the File-Mail Clerk position.
2. Carrier shall, because of the violation cited in (1) above, compensate Clerk Geoffrey Lacefield a day's pay at the rate of File-Mail Clerk position for each date named and on a continuing basis so long as the violations continue.

OPINION OF BOARD: The pivotal question before this Board is whether Carrier violated Agreement Rules 1 and 42(b), when the Supervisor-Correspondence, Mr. A. J. Kremer, collected files and filed correspondence on August 16, 17, 18 and 22, 1978 and also, thereafter, on a continuing basis.

Specifically, Claimant contends that subsequent to the abolishment of the Mail Clerk and File Clerk positions on March 7, 1978, the newly established File-Mail position was unable to maintain a current status with the assigned work that had been performed by the aforesaid position and Supervisor Kremer was thus required to assume more of this work. He adduced numerous Third Division and Public Law Board Authorities, including the Awards of Public Law Board 1605, involving the same parties scope rule and official work disputes claims and asserted that the work at issue was not incidental as defined by these holdings.

Carrier, disputes these contentions and argues that the work performed by Supervisor Kremer was historically performed by the Supervisor-Correspondence in the Engineering Department since 1948 and was protected by the Clerk's Scope Rule (Rule 1). It asserts that neither this Rule or Rule 42(b) were in fact, violated or that Claimant demonstrated work exclusivity. It submitted numerous Awards to support its position.

In our review of this case, we concur with Carrier's position. There is some merit, of course, to Claimant's written affirmation that he exclusively performed this work since June, 1977, which was supported in part, by Clerk F. T. Adams November 3, 1978 statement that Supervisor Kremer did no file work unless in cases of emergency, such as, "Union workers on vacation or off sick", but these assertions are sufficiently counterbalanced by Supervisor Kremer's November 14, 1978 written statement that traditionally every member of the Correspondence Department handled filing and mail to assist each other. We do not find from this comparative assessment that Claimant exclusively performed this work.

Importantly, this position is covered by the Clerk's Scope Rule, unlike the cases referenced by Claimant in his submission, particularly the Awards of Public Law Board 1605, where the officials performing disputed work were not covered by the clerical scope rule and this is the distinguishable criterion.

In Serial No. 70, Interpretation No. 1 to Award 3563, we held, in pertinent part that:

"We are of the opinion that the remaining work of an abolished position which was within the Clerks' Agreement, may properly be assigned to any position within the scope rule of that Agreement. This is so whether or not such position to which it was assigned is excepted from some of the rules of the Agreement. It is argued that as the abolished position was placed under all the rules of the Agreement by negotiation that the remaining work could not be assigned to a partially excepted position except by negotiation. The answer to this contention is that the occupant of the position and not the work is excepted from the specified rules."

We find this interpretative explication persuasive herein, in addition to our correlative finding of nonexclusivity. We will 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 Employee involved in this dispute are respectively Carrier and Employee 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 18th day of February 1981.