NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 23945
THIRD DIVISION Docket Number CL-24161

George S. Roukis, Referee

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

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9445) that:

(1) Carrier violated the effective Clerk-Telegrapher Agreement when, on various dates commencing September 7, 1979 and continuing, it causes and permits employees not covered thereby, to pick up and deliver materials and supplies at Fairmont, West Virginia, and

(2) Because of such impropriety, Carrier shall be required to compensate Chief Yard Clerk J. M. Comer, Fairmont, West Virginia, eight (8) hours' pay ($70.88) for the dates of September 7, 11, 13, 26, 28; October 1, 5, 10, 11, 12, 16, 18, 19, 23, 24, 26, 30; November 1, 2, 6, 9, 15, 21, 23, 27; December 13, 14, 18, 20, 27, 31, 1979; January 1, 7, 9, 10, 15, 18, 23, 25, 29, 31; February 4, 5, 8, 13, 20, 21, 27, 29; March 4, 5, 7, 11, 14, 19, 25, 27, 31; April 1, 3, 7, 9, 11, 17, 18, 24, 29, 30; May 2, 8, 9 and 13, 1980.

OPINION OF BOARD: The Organization contends that Carrier violated Rule 1(c) of the controlling Agreement when it assigned part of the work belonging to the Janitor-Messenger position at Fairmont, West Virginia to a Maintenance of Way Track Foreman. The Janitor-Messenger position was abolished, effective September 7, 1979. The work in question involved the delivery of packages, bundles, cases and parcels of company materials and supplies from the storekeeper's office which the Organization argues should have been assigned to the Chief Yard Clerk position or another clerical employe covered by the Agreement at that location. It avers that the incumbent of the abolished Janitor-Messenger's position regularly performed this function at Fairmont and it was protected work under the Agreement and the relevant decisional law of Special Board of Adjustment No. 192.

Carrier contends that it did not violate the Agreement, since it re-assigned the abolished position's functions to other clerical employes at that location consistent with the requirements of Rule 1(c). It argues that the former Janitor-Messenger consented to use his own vehicle to deliver materials and supplies for which he received a mileage allowance under Rule 23, and this particularized arrangement removed this work from the protective coverage of Rule 1(c). It asserts that it could not force another clerical employe to use his private automobile to perform this work since Rule 23 did not require an employe to use his vehicle for company business to qualify for a position. It avers that the work was also performed by the Maintenance of Way Track Foreman who used a company owned truck to deliver supplies and it was permissible under

these distinguishable circumstances to assign the work to him.

In our review of this case, we concur with Claimant's position. Essentially, the reasoning in Award No. 91 of Special Board of Adjustment No. 192 articulates a fundamental principle that if work of an abolished position is incident to the primary duties of any craft or class, the work nonetheless, if it is to be continued at that location, reverts to the remaining employes of the abolished position's craft at that location. The duties of the Janitor-Messenger in the instant case, required him to use his own vehicle, pursuant to Rule 23, to deliver the materials at Fairmont, but he also loaded and unloaded these materials in his vehicle. In effect, he performed an integrated work process that was different from the incidental work performed by the Maintenance of Way Track Foreman. In some cases, however, it was necessary to load these supplies in the Maintenance of Way Track Foreman's truck, because of bulk weight, size or convenience, but this incidental work did not warrant its exclusive assignment to the Track Foreman, when the Janitor-Messinger's position was abolished. The work should have been first offered to Claimant or the other clerical employes at Fairmont, West Virginia before being assigned carte blanche to the Track Foreman. If Claimant or the other employes refused to perform this work, in accordance with Rule 23, then the Track Foreman could have been assigned this work. Exclusivity is not at issue. Since the work was performed by the Janitor-Messenger on a rather long term basis, it was work that de facto accrued to this position and was protected by Rule 1(c). Inasmuch as Carrier did not offer this work first to Claimant or the other clerical employes at that location, it violated the Agreement. We agree with Carrier, however, that the claimed relief requested is unduly excessive and disproportionate to the magnitude of the violation and we will direct that Claimant be paid his straight time for fifteen (15) minutes on each of the claimed dates. This was the estimated time it took to perform the disputed function.

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 violated.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: Acting Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 14th day of July 1982.