

The Third Division consisted of the regular members and in addition Referee Eckehard Muessig when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
(
(Central Vermont Railway, Inc.

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood
(GL-10032) that:

(a) Carrier violated the Agreement when on January 8, 1983, and each continuing day, it permitted Fabe's Cab Company to transport train crews and mail bags intra city within the St. Albans Terminal.

(b) Carrier shall now be required to compensate the senior available unassigned employee for eight (8) hours punitive pay at the appropriate rate, to be determined by a joint check of the Carrier's records for January 8, 1983, and each subsequent date that it violated the Agreement by using Fabe's Cab Company."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

This Claim was triggered when the Carrier, on November 30, 1982, abolished the position of General Clerk/Machine Operator located at St. Albans, Vermont. The Claim deals with the work of transporting crews and mail, a function which the Organization contends was for the most part performed by the incumbent of the abolished position.

The Carrier essentially contends that, while Clerks were called upon to transport crews and mail perhaps, "on a more or less regular basis", it also had used other persons not of the Clerks' craft to perform this function. The Carrier mainly bases its rejection of the Claim on its determination that

the Scope Rule of the Agreement, controlling in this dispute, does not provide that the transporting of crews and the handling of mail belongs exclusively to the employees in the clerical classification.

The Rule principally at issue in this dispute is Article I, Scope, which reads:

ARTICLE 1 - SCOPE

- 1.1 These articles shall govern the hours of service and working conditions of the following class of employees, subject to the exceptions noted.
- 1.3 Clerks, Clerical Workers, Machine Operators, such as Operators of typewriters, adding and calculating machines, bookkeeping, accounting, timekeeping, keypunch and statistical machines, dictaphones and Operators of mechanical machines for the transmission or receiving of communications at any point on the Central Vermont Rwy., and other office, station and stores employees, such as, office Boys, Messengers, Train Announcers, Gatemen, Baggage and Parcel Room employees, Train and Engine Crew Callers, Telephone Switchboard Operators, Elevator Operators, office, station and warehouse Watchmen, Janitors, and Operators of trucks, tractor, cranes and other machinery assigned to Stores Department, Laborers, employed in and around stations, stores and warehouses shall be considered as employees within the meaning of this agreement.
- 1.4 Positions and/or work referred to 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.

"16.7. When a position covered by this Agreement is abolished, the work previously assigned to such position which remains to be performed will be assigned in accordance with the following:
 1. To another position or other positions covered by this agreement when such positions remain in existence, at the location where work of the abolished positions is to be performed.

2. In the event no position under this agreement exists at the location where the work of the abolished position or positions is to be performed, then it may be performed by an agent, yardmaster, foreman or other supervisory employee, provided that less than four (4) hours work per day of the abolished position or positions remains to be performed; and further provided that such work is incident to the duties of an agent, yardmaster, foreman or other supervisory employee."

The facts show, in the instant case, that the work at issue, for some considerable time, has been assigned to positions under the parties' Agreement which is a "Position and/or Work" Scope Rule. The Carrier argued that taxis had been used for transporting train crews as well. The Organization responded by stating that taxis were only used in emergency situations. The Carrier never refuted that argument while the case was still on the property. Based upon the evidence presented and the Scope Rule in question we must determine that the Agreement was violated.

In view of all of the foregoing, and after fully considering the submissions of the parties, the Claim is sustained to the extent that two (2) hours per day is to be awarded at the pro rata rate of pay from January 8, 1983, until that date when the work is assigned to a member of the Clerk's craft or the parties settle the matter, pursuant to their Agreement.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 23rd day of November 1988.