

The Third Division consisted of the regular members and in addition Referee Edward L. Suntrup when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union
(Missouri Pacific Railroad Company)

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood
(GL-10110) that:

1. Carrier violated the Clerks' Rules Agreement when it allowed persons not covered by the Agreement to perform the work of delivering export documents to the U. S. and Mexican Customs Offices on cars going into Mexico.

2. The following named employees of the Carrier covered by the Clerks' Agreement shall be allowed eight (8) hours pay at \$101.03 per day on each of the days as outlined below:

- (a) Clerk Joe Lara February 13, 14, 15, 16, 17, 21, 22, 23, 24, 27, 28, March 1, 2 and 15, 1984.
- (b) Clerk P. A. Anderson March 14, 1984.
- (c) Clerk R. Saldivar March 14, 1984."

FINDINGS:

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

The carrier or carriers and the employee 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.

Claims were filed for the three Claimants requesting eight (8) hours pay (\$101.03) for various dates in February and March of 1984, because the Carrier allegedly assigned an employee not covered under the Agreement to deliver export documents to U.S. and Mexican Customs Offices.

The Organization contends that the work involved has traditionally and historically been performed by employees covered by the Agreement until the instant dispute arose.

The Carrier responds that even though members of the Organization have been used to make such deliveries in the past, it has also been the practice for many years to assign such duties to Yardmasters, Assistant Trainmasters, Carmen, and to other non-agreement personnel. The Carrier argues that such work had not been specifically reserved to members of the Organization, either under the Agreement, or by past practice.

The record shows that clerical job bulletins have shown that one of the duties of this craft is the delivery of customs forms. This information on job bulletins, in itself, does not persuade the Board, however, that the work in question is the exclusive purview of Clerks. The listing of information on a job bulletin is not the same as a legal contract as Award No. 16 of Public Law Board 3314 has underlined and with which this Board agrees. That Award, issued to resolve a dispute between the same parties here at bar, states the following:

"The Board finds that a Bulletin advertising a job creates or establishes no legal obligations. Its purpose is information rather than contractual. The offer and acceptance of a job advertised in a bulletin is not the equivalent of the offer and acceptance creating a legal contract."

For the Organization to prevail, it must substantiate either that the work in question is reserved by clear contractual language, or by a showing that such duties have traditionally and historically been performed by members of the Organization, exclusive of all others. During the handling of this case on the property, the Carrier contended that others had also performed this work for many years as noted above. This contention by the Carrier was not challenged by the Organization during the handling of this case on the property. The Board has no choice, but to accept the Carrier's version as factual.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: 
Nancy J. Decker - Executive Secretary

Dated at Chicago, Illinois, this 4th day of December 1989.