ORG. FILE 8-1
CARRIER FILE D-2706
NRAB FILE CL-9364

AWARD NO. 19
CASE NO. 19

SPECIAL BOARD OF ADJUSTMENT NO. 194

PARTIES TO DISPUTE: The Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes

St. Louis-San Francisco Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the terms of the currently effective agreement between the parties when on or about February 7, 1956, Group 1 Yard Clerks at the Ewing Avenue Yard Office Building were instructed and required to perform all the janitor duties which are usually and customarily assigned to Group 2 Janitors at a time when Group 2 employes were available to perform the work.

(2) Joseph Allen, the senior available extra Group 2 employe, and/or his successors now be paid for a call on February 8, 1956, and each succeeding day on which Group 1 employes performed Janitor work at Ewing Avenue, until corrected.

FINDINGS: Special Board of Adjustment No. 194, upon the whole record and all the evidence, finds and holds:

The Carrier and Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act as amended.

This Special Board of Adjustment has jurisdiction over this dispute.

This claim presents the question whether the Agreement prevents the Carrier from assigning janitor work to Group 1 Yard Clerk positions.

Rule 5 creates Seniority Districts and Rule 4 creates three Seniority Groups as follows:

Group 1: Employes who regularly devote not less than four hours per day to clerical work (defining such work as keeping records and accounts and so on).

Group 2: "A" Telephone switchboard operators (System Roster).

"B" Porters and Janitors, General Office Buildings, St. Louis and Springfield.

"C" Other specifically described office and station employes such as ticket and waybill assorters, janitors and so on.

Group 3: Employes performing manual work not requiring clerical ability.

Rule 6 requires the posting of seniority rosters in each seniority district, separated as provided in Rule 4 into groups.

Under Rule 3(e) 1 employes, promoted from one seniority group to another, retain and accumulate seniority on the roster from which promoted.

Under Rule 3(e) 2 employes in Group 1 "shall be permitted to use their Group 1 seniority" on Group 2 Roster "C" and Group 3 positions; and employes in Group 2 Roster "C" and Group 3 "shall be permitted to exercise their seniority on either roster in the other." This subsection of the Rule goes on to provide:

> "In any case of exercise of seniority not acquired by actual performance of work on position covered by roster, such seniority shall not be exercised until employe has exhausted seniority rights on regular assigned positions in the group in which employed."

The Superintendent of Terminals has general supervision over all station and yard clerical forces in the St. Louis Terminals including:

	Mile Post
Seventh Street Freight Station	
Ewing Avenue Yard	0.8
Chouteau Avenue Yard	3.1
Tower Grove Station	3.3
Cheltenham Station	5.1
Lindenwood Yard	7.1

On the date under claim there were five Yard Clerks employed in Group 1 around the clock seven days a week, at Ewing Avenue. Their principal duties consisted of checking, carding and interchanging cars and preparing related reports. There were also janitor positions in Group 2 as follows: A seven-day janitor position at Lindenwood and another at Tower Grove; and a regularly assigned relief position which protected the four rest days on each of the two seven day positions. This regular relief position was also assigned janitorial duties at Ewing Avenue one day each week which filled out the five-day relief assignment. There were also two janitor positions at Seventh Street Station.

Finding the janitorial service thus provided at Ewing Avenue to be insufficient, the Carrier instructed the Yard Clerks at Ewing Avenue "to see that this office is swept and kept clean" (offices of Car Inspectors on first floor; and yard office and offices Yardmaster and Special Officers on second floor). The regular relief Group 2 position continued to perform janitor work one day each week at Ewing Avenue as before.

First. While it is true that the work comprised in each of these three groups is defined in considerable detail, the Agreement does not make the work falling into any given group the exclusive work of that group.

On the contrary, the entire scheme of classification into groups turns upon the preponderance of group duties assigned to a position and this pre-supposes the assignment of work across group lines.

Thus, a position may be assigned a considerable amount of work defined as Group 1 work, but the position is nonetheless classified in Group 2 if the preponderance of work assigned to the position falls within the definition of Group 2 work. Conversely, if a position is assigned four hours of work defined as Group 1 work, the position is classified in Group 1 and this presupposes the additional assignment of other than Group 1 work to that position. Likewise, in practice positions are classified in Group 2 or Group 3 upon the basis of the preponderance of Group 2 or Group 3 work assigned to the position.

It follows that, under this Agreement, the establishment of these three groups does not have the effect of limiting positions to the performance of the defined work of one particular group, nor does it have the effect of making the defined work of one particular group the exclusive work of positions in that group. Positions are divided into three distinct groups but the work is not so divided.

Second. The establishment of these three groups does have the effect of identifying three different types of skills for pay purposes; and although a position may combine the work of all three groups, the preponderance of work assigned, not merely the performance of any higher rated group work, determines the classification of the position and hence the rate of pay.

The establishment of these three groups and the maintenance of separate group seniority rosters also identifies the three groups for purposes of reduction of force, promotions and displacements.

Although seniority rights attach to positions, Third Division Adjustment Board awards have nevertheless found a violation of seniority rights when work is removed and assigned to strangers even when there is no express rule forbidding such a transfer.

Third. There are numerous Third Division awards holding that in the absence of a rule to the contrary, seniority rights are violated when work is transferred from one seniority district to another (Award 4076 and others); and this principle has been applied when work is transferred from one seniority group to another in cases where the work is defined and divided into exclusive groups or where there is a mutually agreed upon interpretation as in Awards 6021 and 1306 or where there has been an established practice (Awards 6021, 5895, 5413, 5388, 4543, 4490, 3656, 2585 and 1306). But the holdings have been otherwise where, as here, the Agreement does not altogether prohibit the assignment of work across group lines (Awards 6140 and 2011; and see Award 7167).

Award 2011 denied a claim such as this and distinguished Award 1459 which sustained such a claim in reliance on Award 1306 saying that the questions involved in Awards 1459 and 1306 were "almost identical." But the rule in sustaining Award 1306 carried a mutually agreed upon interpretation which read:

> "It is mutually agreed that the purpose and intent of the Clerks' contract is to segregate the various classes (see Classes 1, 2 and 3, Rule 27) of duties as far as conditions will permit, and that in case where the work of a given class on an abolished position is distributed to another position it will be assigned to other employes holding positions of the same class when such employes are available and qualified."

and there is no such interpretation here.

There is evidence of practice before us dating back to 1924, but it will not support the conclusion urged by the Organization which is along the lines of the above quoted interpretation. In practice, work has been reassigned across group lines and claims have ensued and have been dropped. By the same token, the Carrier has, upon protest, receded from extreme exercises of the power of assignment. Thus, the practice evidences mutual give-and-take rather than the rigid application of the Agreement which marks the limits of the function of this Board.

A W A R D

Claim denied.

/s/ Hubert Wyckoff
Chairman

I dissent.

/s/ T. P. Deaton
Carrier Member

/s/ F. H. Wright
Employe Member
(Reserving the right to file a written dissent)

DISSENTING OPINION OF EMPLOYE MEMBER TO AWARD NO. 19
OF
SPECIAL BOARD OF ADJUSTMENT NO. 194

The decision of the majority in this Award No. 19 and Awards No. 21 and 22 of Special Board of Adjustment No. 194 which follow, are so clearly and obviously in error and so far exceed the authority of this Board as to render these awards without value as precedents for the following reasons:

1. Under item "First" in the second paragraph on Page 4 it is stated, "and this presupposes the assignment of work across group lines"; and in the third paragraph it is stated, "and this presupposes the additional assignment of other than Group 1 work to that position". These statements are based upon the first paragraph of Rule 2 (Definition of Clerks), which provides that "employes who regularly devote not less than four hours per day" to the performance of certain work "shall be designated as clerks", completely ignoring the remainder of Rule 2, which provides that such definition shall not apply to employes engaged in certain other work concomitant to positions described in paragraphs 2 and 3 of Rule 1 of the Agreement. This rule is strictly a definitive rule which describes the employes who will be designated as clerks and does not, and was never intended to, authorize or permit the assignment of work across group lines, and has never previously been so construed either by practice or by other awards. In similar cases involved in awards of the Third Division, N. R. A. B. where the rules were similar to those involved in these cases, no such interpretation was ever made, and claims were sustained, I refer particularly to Awards 3656, 4543, and others referred to therein, as well as Awards 2585, 5388, 5413, and 5895. Such interpretation of Rule 2 of the Agreement is clearly erroneous.

2. If correct, this award, as well as Awards 21 and 22 which follow, would have the effect of completely nullifying and eliminating the seniority rights of employes in Groups 2 and/or 3 to any work and would completely abrogate Rule 4 (Seniority Groups) in the Agreement, which this Board is not authorized to do; and these awards clearly exceed the authority of this Board in that respect. In other words, these awards would have the effect of reserving all work, regardless of its nature, to Group 1 employes to the complete exclusion of employes in other groups.

3. In paragraph "Third" at the bottom of page 4 it is stated, "There is evidence of practice before us dating back to 1924, but it will not support the conclusion urged by the Organization which is along the lines of the above-quoted interpretation."

In the submissions and other handling of this case no evidence was ever produced to indicate that there had ever been a practice authorizing or permitting the Carrier to unilaterally cross group lines in the assignment of work particularly where, as here, there were positions and employes available in each group at the various points on the Carrier or sufficient work to justify full time positions in the various groups. The only evidence produced showing the crossing of group lines was at points where there was not sufficient work of a particular group at the particular point to justify a position in that particular group and there were no employes available in

that group to perform the work. Never before in instances such as here where there were five Group 2 Janitor positions has it been permissible, authorized or condoned, to assign the work of Group 2 employes to Group 1 employes. The only instances shown as a practice have been at points where there were established Group 1 positions and insufficient work in Group 2 and/or Group 3 to justify a position in Group 2 and/or Group 3.

Also, in item "Third" attention is called to there having been a mutually agreed-upon interpretation in the cases involved in Awards 6021 and 1306, but we do not find where there was ever any such mutually agreed-upon interpretation in the cases involved in Awards 2585, 3656, 4543, 5388, 5413, 5895, which were also sustaining awards based upon rules similar to those involved in this dispute. Neither was there any such mutually agreed-upon interpretation in the case involved in Award 1459, which was held to be an almost identical case to that of Award 1306; and the reliance upon the mutually agreed-upon interpretation in Awards 6021 and 1306, to the exclusion of the preponderance of awards where there was no such agreed-upon interpretation, further indicates the error of this award and Awards 21 and 22 which follow.

4. If correct, the effect of this Award No. 19 and Awards 21 and 22 which follow, would be to "Eliminate existing rules, regulations, interpretations or practices however established, which restrict or prohibit a Carrier from consolidating positions or extending the jurisdiction of a position." This is exactly the Carriers' Proposal No. 2, which was heard by Presidential Emergency Board No. 106 in N.M.B. Case A-4336; and in its report and recommendation on May 15, 1954, the Emergency Board recommended against the Carriers' above proposal in the following language:

> "The Carriers describe the purpose and intent of this proposal to be to secure relief from any rules in the non-operating agreements or interpretations thereof by the National Railroad Adjustment Board or otherwise which have resulted in practices that restrict the Carriers from consolidating positions or extending the jurisdiction of positions even though no craft or seniority district lines are involved, whenever they deem it advisable to do so; and to authorize Carriers to make consolidations within a craft or class of employees and to extend the jurisdiction of positions only where the work involved is all in a single seniority district.
>
> "The Carriers go on to say this proposal is not to be construed as seeking a rule to authorize the consolidation of positions involving more than one craft or class of employees, or to extend the jurisdiction of a position to absorb work from two or more seniority districts even though in the same craft. They say, as a basis for desiring the change, that while there are few specific rules in the agreements limiting the rights of Carriers to consolidate assignments or extend the jurisdiction of positions, that the divisions of the Adjustment Board having jurisdiction thereof have sustained Organizations' contentions that after an assignment or position is once established, and work assigned thereto, the position can not be consolidated with another position nor its jurisdiction extended to include work of another assignment.

"We think the present rules, and the interpretation thereof by the National Railroad Adjustment Board, provide a reasonable basis for consolidation of positions along class or craft lines, having due regard for the seniority rights of the employees involved, and that the staggering of the work week of these employees, as permitted by the forty-hour week agreement, gives Carriers ample opportunity to have the work of any class or craft performed on any day of the week by regularly assigned employees.

"The proposal would give Carriers the right to unilaterally cross group seniority rosters and disregard point seniority when consolidating positions and when extending the jurisdiction thereof. This would, to a certain extent, have the effect of permitting Carriers to destroy the seniority of employees affected thereby. We think the seniority rights of such employees should be protected. That can best be done by requiring, as is now necessary, a negotiation thereof by the parties involved when an individual Carrier desires to make such change, Certainly such employees' interests would not always be protected if Carriers were granted the absolute authority they here request."

This recommendation was followed and the proposal denied.

In other words, by this Award and others referred to, this Board has assumed the authority to place into effect the above-quoted Carriers' Proposal No. 2, without proper negotiations as required by the Railway Labor Act, which it is not authorized to do. Such proposal was the subject of negotiations, and the Carriers' request was denied; and the only manner in which the Carrier can establish such proposal is by proper negotiations and not through Boards of this nature.

Further, had the Carrier had the authority which this award preseumes to confer upon it, there would have been no reason or necessity for the Carrier to have made its Proposal No. 2.

5. These Awards cannot be accepted as controlling or as precedents.

/s/ F. H. Wright
Employe Member