Award No. 5525
Docket No. 5343
2-MP-FO-'68

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Paul C. Dugan when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 2, RAILWAY EMPLOYES' DEPARTMENT, AFL-CIO (Firemen & Oilers)

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That the Missouri Pacific Railroad Company violated the current agreement when then on November 16, 1965, it improperly transferred work, which was assigned to and performed by Laborers at the North Little Rock, Arkansas Shop, North Little Rock, Arkansas.

2. That accordingly, the Missouri Pacific Railroad Company compensate Laborers Robert Ivy, Jr., and W. E. Green for eight (8) hours at their applicable punitive rate of pay from the aforementioned date and until this practice has been stopped and Laborers are returned to their jobs. This is a continuous claim commencing November 16, 1965.

EMPLOYES' STATEMENT OF FACTS: For many years the Missouri Pacific Railroad Company, hereinafter referred to as the carrier, has maintained its Mechanical Department facilities at North Little Rock, Arkansas.

On November 16, 1965, seven (7) Laborers were employed and assigned to positions of operating chore boy and transporting material and supplies from the Storeroom to various locations, and to Mechanical Employes at the North Little Rock, Arkansas Shop.

Work hours for the Laborers were from 7 A.M. to 3 P.M., 3 P.M. to 11 P.M., 11 P.M. to 7 A.M. The positions were seven (7) days per week prior to September 1, 1949. On September 1, 1949 they all became regular five (5) days per week positions because of the September 1, 1949 Agreement. There were three (3) Laborers working from 7 A.M. to 3 P.M., one (1) Laborer working from 3 P.M. to 11 P.M., one (1) Laborer working from 11 P.M. to 7 A.M., and two (2) Laborers working as relief men. The seven (7) Laborers' duties consisted of picking up requisitions, having them filled at the storeroom, checking items requested, and transporting such items to

the locations where they were to be delivered, and also to the Mechanical Employes for which the items were ordered. Items such as valves, bolts, gaskets, pipe fittings, motors, gears, electric equipment, oil, grease, electric appliances, electric parts and all other material and supplies used by Mechanics, Painters and other Mechanical Employes, were items Laborers transported.

In June, 1941, Laborer E. Nickerson was assigned to one of the 7 A. M. to 3 P. M. positions mentioned above. In November, 1942, Laborer A. C. Henry was also assigned to one of the regular 7 A. M. to 3 P. M. positions mentioned above. Laborers Nickerson and Henry worked said position continuously from June, 1941 and November, 1942, respectively, until November 16, 1965, when their work and jobs were unilaterally transferred to Storeroom Helpers. For over twenty-three (23) consecutive years each of the two (2) Laborers had been assigned to and performed the above mentioned work. This, therefore, had been the acknowledged past practice, and accepted as such by both the carrier and employes for over twenty-four (24) years.

During the steam engine days, back in the 1940's, when the work was more strenuous, said Laborers transported the material and supplies mentioned above mostly by hand and two wheel hand trucks.

All during the 1950's and early 1960's Laborers transported the aforementioned material and supplies mostly by tractors and fork lifts. In 1965, the Carrier purchased two (2) Cushman trucksters. Laborers E. Nickerson and A. C. Henry, mentioned heretofore, but hereinafter referred to as claimants, were instructed to use the trucksters in the performance of their duties instead of transporting material and supplies as in the past, by hand, tractors and fork lifts. These Cushman trucksters are three wheel vehicles about 8 feet long and about 3½ feet wide. They are powered by a two wheel gasoline cylinder engine. The platforms on the trucksters are approximately two feet from the ground, and the wheels are about fifteen inches in diameter. The Cushman trucksters are commonly referred to as chore boys. (See picture of chore boy attached.) This chore boy is being operated by Storeroom Helper E. C. Bell, and identified as Employes' Exhibit A, sheet 1).

In November, 1965, the carrier began establishing what they call material deliver stations. Nine (9) such stations were established. This is evidenced by attached copy of carrier's own blue print, dated November 1, 1965. The carrier document shows nine (9) material deliver stations and their specific locations in and around the shop. (They are in numerical order, and said document is identified as Employes' Exhibit B, sheet 1.)

To establish a so-called deliver station, the carrier merely painted a yellow space on its floor approximately 6 feet long and 4 feet wide, then painted in black a number thereon. Placed an electro-writer close by and that painted space on the floor became an established material deliver station. The electro-writer simply discontinued the need for claimants to pick up requisitions and carry them to the storeroom to be filled, as now when the Mechanical Employes fill out requisitions in the shop on the electro-writer, he is simultaneously filling out copy of same at Storeroom (see Employes' Exhibit B, sheet 2). This exhibit shows two of carrier's electro-writers, one in use and the other not in use. These pictures exemplify a true picture of automation in effect.

On November 16, 1965, Superintendent P. E. Latsha told claimants that their jobs of operating the chore boy and transporting material and sup-

plies were being transferred to Storeroom Helpers, and they were not to pick up any more material and supplies at the Storeroom and transport it to the material deliver stations, nor to Mechanical Employes.

When Local Chairman, C. D. Trent of the Firemen and Oilers contacted Management on November 16, 1965, concerning Laborers' work being transferred to Storeroom Helpers, he was told that it was done because the work could be performed by the Storeroom Helpers more economically and more efficiently.

On December 3, 1965, the carrier posted Bulletin No. 356, abolishing claimants' jobs, which they were taken off on November 16, 1965. The Bulletin read as follows:

"North Little Rock, Arkansas – December 3, 1965

BULLETIN NO. 356 ABOLITION

ALL CONCERNED:

Back Shop – 3
Train Yard – 2
Union Depot – 1

Effective with close of shift December 6, 1965, the following jobs are abolished:

Laborer – Operate chore boy handling material
Work Days – Monday through Friday
Work Hours – 7 A. M. to 3 P. M.
Party affected – A. C. Henry

Laborer – Operate chore boy handling material
Work Days – Monday through Friday
Work Hours – 7 A. M. to 3 P. M.
Party affected – Ello Nickerson

A. J. Daniel
Shop Superintendent

cc: WBH CDT REL LCB RFM JGJ HLS AMD FAS EJT"

(A copy of which is attached as Employes' Exhibit C, sheet 1.)

The above Bulletin shows that claimants' jobs were to be abolished effective with the closing of shift December 6, 1965, but the carrier did in fact transfer claimants' work and jobs to the Storeroom Helpers on November 16, 1965. This statement is substantiated by statements signed by the three (3) Storeroom men who began performing the work on November 16, 1965. The statement reads as follows:

"March 31, 1966

TO WHOM IT MAY CONCERN:

I am a Storeroom Helper here at the North Little Rock Shop. I deliver material from the Storeroom to the Diesel Shop, and to

Mechanics and whosoever order it. The Mechanical Laborers were taken off these jobs in November, 1965. On about November 16, 1965 I was assigned to perform the work of delivering of material such as valves, bolts, nuts, gaskets, pipe fitting, oil, grease, paints, and all other material and supplies ordered by Mechanics and Mechanical Employes. I transported these materials by use of the chore boy.

The above statement is true and given voluntary and without duress.

/s/ E. V. Fagan
/s/ C. E. Johnson
/s/ Edgar C. Bell"

(A copy of which is attached as Employes' Exhibit C, sheet 2.)

It is clear evidence from the above quoted statement signed by Storeroom Helpers, E. V. Fagan, C. E. Johnson and Edgar C. Bell that the carrier did in fact transfer the work operating the chore boy and transporting material and supplies from the Laborers to the above named Storeroom Helpers on November 16, 1965.

Laborers received $2.3678 per hour. Storeroom Helpers receive $2.5014 per hour. Storeroom Helpers' hourly rate of pay, therefore, is approximately thirteen and one-third cent (13⅓) greater than that af Laborers; hence, on November 16, 1965, the carrier commenced paying a much greater cost per hour unnecessarily for having the same work performed.

Storeroom Helpers not only transported material and supplies to the so-called material deliver stations, but also direct to the Mechanics in the shop. This is not merely an unsupported allegation; it is substantiated by the following signed statement of various Mechanics at the North Little Rock, Arkansas Shop:

"March 31, 1966

TO WHOM IT MAY CONCERN:

I am a Mechanic working here at the North Little Rock Diesel Shop. I have been employed here since the date as shown below. Laborers A. C. Henry and E. Nickerson delivered material to me for the number of years as indicated below. They stopped delivering material such as valves, bolts, nuts, gaskets, pipe fitting, oil, grease, paints, and all other material and supplies around November, 1965. Storeroom Helpers have delivered material to me since the Laborers were taken off their jobs. The laborers always brought items I ordered promptly.

The above statement is true and given voluntary and without duress.

/s/ P. J. Davidson, S.M.W.	4-2-53	13 Years
/s/ Charles E. Bland, S.M.W.	11-23-44	22 Years
/s/ H. H. Haustein, Machinist	2-24-53	13 Years
/s/ L. J. Jackson, Boilermaker	9-27-35	31 Years
/s/ E. W. Weed, Blacksmith	8-25-49	17 Years"

(A copy of which is attached as Employes' Exhibit D, sheet 5.)

It is evidence from the five (5) above named Mechanics that Laborers were taken off their jobs around November, 1965 and Storeroom Helpers has been delivering material since November, 1965 to them.

It has been clearly established in the record that (1) the carrier unilaterally transferred the work in connection with operating the chore boy, transporting material and supplies from the claimants to Storeroom Helpers (2) carrier pays to the Storeroom Helpers approximately 13⅓ cents more per hour than they paid to claimants for performing the same work and (3) storeroom helpers had not performed said work prior to November 16, 1965.

This dispute has been handled with all the officers designated to handle such disputes, including the highest designated officers of the carrier, all of whom decline to make satisfactory adjustment. The agreement of June 1, 1960, as well as Memorandum of Agreement dated May 1, 1940, is controlling.

POSITION OF EMPLOYES: It is the position of the employes that the claim should be sustained for the following reasons. The carrier's action constitutes a violation of Scope Rule 1 of the Controlling Agreement. This Rule reads as follows:

"RULE 1. SCOPE

> These rules govern the hours of service and working conditions of stationary engineers, stationary firemen; power house laborers, fire knockers, fire builders, flue blowers and borers, engine watchmen, sand dryers, transfer-table operators, rod cup fillers, **supplymen,** front end fire box blackers, engine wipers and washers, acetylene generators, attendants, inside hostler attendants, **tractor operators,** shop, enginehouse and car department laborers (including their gang leaders) and Palestine Reclamation Plant and Scrap Yard Laborers." (Emphasis ours.)

When it improperly transferred the work contained in the above Scope Rule to the Storeroom Helpers who are not covered by the terms of the Scope Rule, and have no contractual right to perform the work. Due to this Scope Rule violation, the carrier is obligated to compensate claimants and return them to their jobs and this Honorable Board is requested to so find by sustaining employes' statement of claim.

It is interesting to note the findings in Award 2238 of the Second Division. (Here is what Referee Adolph E. Wenke had to say:)

> "The organization complains of the fact that carrier used employes other than tractor operators to perform certain work at its South Louisville Shops, Louisville, Kentucky. It contends this work, under the scope of its agreement with the carrier, belongs to tractor operators and, by having other of its employes perform it, carrier violated the scope rule thereof. As consequence it asks that carrier be ordered to compensate tractor operators first out on the tractor operators' overtime board for eight (8) hours at time and one-half the regular rate of tractor operators for each day from July 21 to September 22, 1953, both dates included.

The work involved is the pulling of loaded wagons or trailers to and from various locations in the South Louisville Shops.

Rule 1, 'Scope', of the parties' agreement, effective June 1, 1942 with revisions up to February 1, 1952, provides:

> 'These rules govern the hours of service and working conditions of the classes of employes shown below, working in and about shops, power plants, train yards and engine terminals:
>
> Tractor Operators * * *.'

The scope rule, by naming positions, embraces all work which such employes usually and customarily performed at the time of the negotiation and execution of the agreement. See Award 1357 of this Division so holding.

We find, at the time (1943) the position of tractor operators was negotiated into the agreement and ever since, the occupants thereof performed this work except during the period from July 21 to September 23, 1953, when carrier assigned it to and had it performed by other employes. This we find was in violation of the scope rule as it applies to tractor operators at the South Louisville Shops. Consequently, the claim should be sustained to the extent of the work actually lost.

However, for the loss of work coming within the scope of an agreement the employes whose work was thereby taken from them are entitled to recover for the loss thereof at the pro rata rate applicable thereto, and not to a penalty rate."

In Third Division Award 3947 (Referee Whitley P. McCoy), Brotherhood of Maintenance of Way Employes v. Central of Georgia Railway, this Board held in part:

> "* * * The evidence of practice is determinative of the meaning given the Scope Rule by the parties. It may be true, as argued by the employes, that practice cannot have the effect of changing the Agreement. But it can and does have the effect of showing what the parties, through the years, have interpreted the Agreement to mean."

In Third Division Award 4493, Referee Carter stated:

> "The Board has repeatedly held that where a contract is negotiated and existing practices are not abrogated or changed by its terms, such practices are enforceable to the same extent as the provisions of the contract itself. Awards 2436, 1397, 1257. We are obliged to say, therefore, that the carrier could not properly modify or abrogate the practice except by negotiations."

Accordingly, the employes submit that the transferring of the work operating the chore boy, transporting material and supplies to the Storeroom Helpers was entirely improper and unjust, and the claim of employes should be sustained.

It is further the position of the employes that the carrier violated that portion of the Memorandum of Agreement dated May 1, 1940, herewith submitted as Employes' Exhibit D, Sheet 1, and herewith quoted in pertinent parts as follows:

> **"It is not our policy to arbitrarily transfer work from one craft to another without an understanding having been had prior to the transfer with the appropriate representative of the employes and this policy will be followed."** (Emphasis ours.)

From the foregoing letter of understanding, it is clear that the carrier agreed to follow the policy of having an understanding with the representative of the employes prior to transferring their work to another craft.

No consultation was had with the employes' representative; neither was there any understanding to that effect, and, for that reason if for none other, the claim of the employes should be sustained.

The Carrier contends that its reasons were economical. But, the fact is: Laborers' rate of pay was $2.3678 per hour, and Storeroom Helpers' rate of pay is $2.5014 per hour. This is approximately 13⅓ cents more, which the carrier is now paying for having the same work performed. Where is the economical reason? There is simply no justification for the carrier transferring this work to higher rated employes.

If for some reason your Honorable Board hold otherwise, which the employes are unable to imagine, then it is further the employes' position that the carrier manifested an intent to treat it as the work of the craft to which they assigned it to for such a long period of time. In this regard, the employes desire to point out that by custom, historical practice and tradition, the work of operating the tractors, fork lifts, chore boys, transporting material and supplies to various locations at the North Little Rock, Arkansas Shop had been performed exclusively by Laborers. Clearly, the carrier's action was contrary to past practice and, therefore, the employes' claim should be sustained.

The long-continued practice concerning operating of tractors, lift trucks, chore boys, transporting material and supplies from the Storeroom to the various locations and to employes in the shop must be considered in order to arrive at a correct interpretation of the existing agreement or the intention of the parties who negotiated said agreement.

In viewing said practice, it should be remembered the mutual understanding and practice detailed in the Employes' submission continues without change through numerous revisions of the agreement negotiated by various collective bargaining representatives with full knowledge of said representatives. Accordingly, as is usually true when attempting to interpret Scope Rules in order to arrive at any understanding of the work to be performed by the employes covered thereby, resort must be had to practice, both prior and subsequent to the effected date of parties involved. This is particularly true where, as here, the Scope Rule survived many revisions without any change, while the continued practice remained unchanged.

Now, this Board is familiar with the effect that past practice has upon the interpretation of collective bargaining agreements in the railroad industry where the agreements, as here, may be completely or wholly silent as to

matters involved in such practice. For your convenience we quote the following material from National Railroad Adjustment Board relating to the interpretation of agreements:

THIRD DIVISION AWARD 4104 (Referee Parker)

"One of these rules now so well established by Awards of this Division as to almost preclude necessity for their citation, is that when collective bargaining contract is negotiated, and existing practices are not abrogated or changed by its terms such practices are just as enforceable as if they had been expressly authorized by the terms of the instrument itself."

THIRD DIVISION AWARD 5306 (Referee Wyckoff)

"A prior practice may have controlling effect when an agreement is adopted after the proposal and rejection of an amendment which provides for the abrogation of all prior practices (Award Nos. 3338, 2436, 1102), or when the agreement is ambiguous and reasonably susceptible of two interpretations, one of which is consistent with the practice (Awards Nos. 4366, 3149, 3002, 2466, 2278, 1178, 945, 213 and 72), or when the agreement is indefinite, an example of which is the usual Scope Rule. (Awards Nos. 4791, 4638, 4593, 4464, 4348, 4335, 4277, 4208, 4104, 3932, 3727, 3604, 3603, 3526, 2090, 1811, 2326 and 1320.)."

SECOND DIVISION AWARD 4016 (Referee Anrod)

"In order to be determinative of the rights of the parties to a labor agreement, it must convincingly be demonstrated that a past practice has been of long continued duration, well known to and mutually accepted by the parties. See: Clarence M. Updegraff and Whitley P. McCoy, **Arbitration of Labor Disputes**, Second Edition, Washington, D. C., BNA Incorporated, 1961, p. 226 and references cited therein." (Emphasis ours.)

FIRST DIVISION AWARD 4173

"* * * There are many practices as to which the schedules are silent, but which constitute just as much a part of the agreement as though they were incorporated; indeed, it would require almost an encyclopedia to specify all such existing practices. Nevertheless, it is an elementary rule of the law of contracts that when parties make an agreement rested on condition of affairs not even mentioned in the agreement, one party to such contract may not by unilateral action so alter these conditions as to adversely affect the performance by the other parties. * * *"

The employes are not relying completely upon past practice, but it has been clearly established in the record that the Carrier's action was contrary to the past practice and, therefore, the employes' claim must be sustained.

CARRIER'S STATEMENT OF FACTS:

1. There is an agreement in effect between the parties hereto dated June 1, 1960, governing this dispute, which is on file with your Board and which is made a part hereof by reference.

2. The diesel facility at North Little Rock, Arkansas, is the largest shop point on the Missouri Pacific Railroad. Over 900 men are employed in the shop. The volume of work in the shop requires the maintenance of a large Store Department and the issuance of a large quantity of material and supplies by the Store Department to the Mechanical Department.

3. On November 16, 1965, a new system was installed for ordering and delivering material and supplies. Electrowriters were installed at numerous points throughout the shop. A printer was installed in the storeroom. With the use of this equipment, the foreman in the shop can go to the nearest Electrowriter and write his order for materials or supplies. The order is reproduced in the storeroom. This eliminates the necessity of taking an order written on a piece of paper to the storeroom.

4. When the order is reproduced in the storeroom, a store helper fills the order. The store helper is furnished a vehicle called a Cushman Truckster, which is a small, three-wheeled vehicle with a reasonable load-carrying capacity, but which is small enough that it can go up and down the aisles in the storeroom and drive through the shop. The store helper drives the Cushman Truckster through the storeroom, filling the orders directly from the shelf into the Cushman Truckster. When he has filled all the orders or has a load, he drives to the location of the Electrowriter, where the order originated. An area adjacent to the Electrowriter has been designated as a sub-store point and clearly marked with the use of painted lines on the floor. The store helper leaves the ordered material at the substore point where the foreman or Mechanical Department employe takes delivery.

5. The improved system freed two laborers for other duties by eliminating the work of carrying the order to the storeroom, waiting while the order is filled, and carrying the order back to the originating point.

6. The claim on behalf of the two furloughed laborers was presented to the Master Mechanic on November 18 by the Local Chairman as follows:

"509 West Fifth Street
North Little Rock, Arkansas

November 18, 1965

Mr. A. J. Daniel, Shop Superintendent
North Little Rock Shops
North Little Rock, Arkansas

Dear Sir:

This is for your information and files. It has become necessary that we enter claims for the following furloughed men for 8 hours per day from November 16, 1965 until such time as these claims are settled. (Robert Ivy, Jr. and W. E. Green)

Rule I of the Foremen and Oilers agreement specifies that Shop Laborers will handle the delivery of materials. It has been the practice for the past twenty years (20) or more than Laborers have picked up materials from the store department and delivered to all departments. On November 16, 1965 other than shop Laborers began

delivering materials to all departments. Hoping to have a favorable decision in the matter as soon as possible.

These are the men who have been affected: E. Nickerson and A. C. Henry. Rate of pay $2.36⅞ per hour.

Sincerely yours,

/s/ C. D. Trent
Cloyd D. Trent"

11. The claim was declined by the Master Mechanic since he could find no support for the claim. The decision was appealed through channels to the Director of Labor Relations. After thoroughly investigating the claim, the decision of the Master Mechanic was affirmed in the following decision:

"February 4, 1966
G 248–1220

Mr. W. B. Hayes
General Chairman – Firemen & Oilers
401 Buder Building
St. Louis, Missouri 63101

Dear Sir:

Please refer to your letter of February 2, 1966, appealing claim of Laborers Robert Ivy, Jr. and W. E. Green for eight hours at their applicable punitive rate from November 16, 1965 account the delivery of material and supplies allegedly improperly transferred to Store Department employes at North Little Rock, the claim to be continuous from November 16 until the alleged violation ceases.

The Store Department at North Little Rock recently placed into effect an improved system for issuing material and supplies to the Mechanical Department. Sub-store points were established throughout the shop at which electro-writers were placed. The Mechanical Department employe orders the material or supplies needed by the use of the electro-writer. Store Department employes fill the order and bring the order to the sub-station where the order was placed. The Mechanical Department employe who ordered the material or supplies picks it up at the sub-station. Mechanical Department employes are still picking up material and supplies at the point where it is made available to them by the Store Department.

The policy letter of May 1, 1940, to which you refer, is not a memorandum of understanding as stated in your letter, and cannot afford a basis for a time claim. Furthermore, the policy applied to the transfer of work among the various shop craft employes and does not apply to the situation here.

We note you give the rate of pay of certain Store Department employes. The employes who fill requisitions are Store Department helpers (not laborers) and are required to read the requisition, find the item in the storeroom, count the number of items needed, write the item number on the requisition, in addition to transporting the

item to the location where it is to be delivered to the Mechanical Department. Their work is not comparable to that of a Mechanical Department laborer, and the rates of pay are not comparable.

When the number of sub-store points were reduced at various points, laborers did not complain, and they should not complain when additional sub-store points are designated.

The claim is respectfully declined.

Yours truly,

/s/ B. W. Smith"

12. The claim was discussed with the General Chairman during conference on February 10, 1966, at which time the General Chairman alleged that materials were being delivered directly to mechanics rather than being left at the various substore points. An investigation was made of this allegation, and it was found that certain items such as flash lights and flash light batteries, which can be used by anyone, would disappear from the substore point between the time the item was delivered by the Store Department employe and the time the mechanic who ordered the flash light or batteries could pick them up. In view of this fact, the foreman does sometimes indicate on his order that the item is to be given to him personally in order to insure his receiving it. The results of this investigation were given the General Chairman in the letter confirming the conference, reading as follows:

"March 7, 1966

G 248–1220

Mr. W. B. Hayes
General Chairman – Firemen and Oilers
401 Buder Building
St. Louis, Missouri 63101

Dear Sir:

In conference on February 10, 1966, we discussed claim of Laborers Robert Ivy and W. E. Green for eight hours at their applicable punitive rate from November 16, 1965, account the delivery of material and supplies allegedly improperly transferred to Store Department employes at North Little Rock, the claims to be continuous from November 16 until the alleged violation ceases.

As we emphasized during conference, the Carrier may decrease or increase the number of store points or sub-store points stocked by Store Department employes. Here the Carrier simply increased the number of sub-store points and installed an improved method of transmitting requisitions to the Storekeeper. Laborers are still used to handle heavy material when needed.

During the conference, you alleged the Store Department employes were delivering material directly to the mechanics. We have investigated this matter and find that flashlights and flashlight batteries are usually delivered directly because they otherwise did not reach the man requisitioning the item. We do not know of any other items being so handled contrary to your allegation during conference.

There is no merit to the claim and the decision given you February 4, 1966 declining the claim is affirmed.

Yours truly,

/s/ B. W. Smith"

13. After a further exchange of correspondence, the Carrier received advice of the Employes' intention to file ex parte submission with your Board in connection with this dispute.

POSITION OF CARRIER: It is the position of the Carrier that no work was "transferred" from laborers to any other craft as alleged in paragraph 1 of the Employes' Statement of Claim. We shall show that the Employes have failed to prove that any work was "transferred" and that the claim must fail for lack of proof of the allegation. It is further the position of the Carrier that, in any event, the Scope Rule does not contract the work in dispute to laborers exclusively. We shall show that the Scope Rule, which was cited by the Employes in their handling of the claim on the property, does not support the claim now before your Board.

One of the problems which has been common to all repair points, both for locomotives and cars, has been the problem of getting parts to the mechanic promptly after he finds the need for the item in the course of his work. The Carrier devised a new system taking advantage of a vehicle manufactured by Cushman, which is called a Truckster. The vehicle can carry a man and a fair size load, but is small enough that it can move between the shelves in the storeroom and operate along the aisles and ramps in the shop facilities. With the use of the Truckster, an employe can get around a shop much faster. The Carrier first tried the new system at Kansas City. Substore points were established at selected points in the diesel facility. A Store Department employe makes regular rounds of the substore points, picking up requisitions or store orders, taking them to the storeroom, filling the orders as he drives the Truckster through the storeroom, loading the items directly into the Truckster. He then delivers the items to the substore point where the order originated. This system has speeded up the delivery of materials and has now been installed at other shop points such as Sedalia, DeSoto and Houston.

The same sytem was installed at Little Rock, beginning November 16, 1965, with one additional improvement. The shops at Little Rock are by far the largest shops on the property. The size of the shops justified the installation of Electrowriters as well as the establishment of the substore points. Although the improved system has been in effect at our larger shops for some time, this claim from Little Rock is the only claim which has been progressed to your Board growing out of the installation of this improved system for issuing material and supplies to the Mechanical Department.

The first allegation in the Employes' Statement of Claim is that certain work was "transferred" from laborers to Store Department employes. The facts are no work was transferred. As we have pointed out above, the Electrowriter eliminated the work of delivering orders to the Store Department. This eliminated half of the work laborers were performing, that is, getting the written store order from the foreman and taking it to the issue window at the storeroom.

The agreement does not prohibit the installation of equipment which has the effect of increasing efficiency and replacing manual labor. For example, your Board denied a claim on this property from the same organization when the Carrier utilized a machine to clean diesel parts automatically. Laborers had been cleaning the parts either manually or by placing them in lye vats. In Award 4748, your Board held that the work had not been transferred to the machinist helper who operated the machine, but that the work of cleaning the parts was being done by the machine. For other examples where your Board denied claims where machines eliminated certain items of work, see Third Division Awards 8656 and 9319, and Fourth Division Award 1641.

Applying the principles in those awards to this dispute, we see that the Electrowriter eliminated the work of taking the store order from the originating point in the shop to the storeroom. When the foreman writes the order on the Electrowriter, the order is automatically reproduced in the storeroom, thereby eliminating, rather than transferring, the work of delivering the store order.

Not only has the work of delivering the store order been eliminated, but the delay in delivering the material to the work location has been decreased by the establishment of store points. Through the years, the number of store points in a shop has fluctuated depending on the circumstances in each shop. At many points, the Carrier has a locomotive maintenance facility, a car repair facility, and frequently other shops, such as an air brake room, wheel shop, etc. With the transition from steam engine to diesel engine and the centralization of "locomotive and car repair work", the number of shops has decreased. As the amount of work in the shops at the smaller points decreased, the storeroom activity was centralized. In some cases a substore point would be maintained at the repair track and at the locomotive maintenance facility. Frequently, the two store points were consolidated. When this was done, a Mechanical Department employe frequently had further to go to the centralized store point to pick up material and supplies. In some cases, disputes arose with the clerks when store points were eliminated, but no claims were ever filed on behalf of a Mechanical Department employe by the elimination of such store point.

The Carrier has now found it necessary to increase the number of store points at some major shop facilities in order to satisfy the ever-increasing demand for greater efficiency. The firemen and oilers' agreement does not prohibit the Carrier from increasing the number of store points. In the instant case, the Carrier has established substore points at each location where an Electrowriter has been installed in the shops at Little Rock. Store Department employes have the responsibility for the material and supplies until it is placed at the substore point where employes of the Mechanical Department will take delivery of the items. Mechanical Department employes continue to pick up materials from the Store Department and deliver them to the work location in all departments. No work has been transferred from laborers to Store Department employes.

Although the Employes have not been able to prove that any work has been transferred from laborers to any other craft, and must be denied for that reason, we also point out that the firemen and oilers' agreement has not contracted any work exclusively to laborers, including the handling of material and supplies. The Employes have filed a series of claims through

the years in which an effort was made to show that certain work had been performed by laborers exclusively and was contracted to them exclusively by the terms of the agreement. These claims have been denied.

The firemen and oilers' agreement does not contain a classification of work rule, but it does contain a scope rule. See Rule 1 of the agreement. Rule 1 does not describe the work covered by the agreement, but lists the various types of workers who are covered. Your Board has held that Rule 1 does not make any particular work the exclusive work of laborers.

For example, in Award 2215 your Board denied a claim where hostlers and hostler helpers performed certain work which previously had been performed by laborers when so instructed. Award 2215 illustrates the fact that job functions are often overlapping in the railroad industry, and that the same function can be performed by more than one craft.

In Award 2845, again an award on this property, your Board denied a claim where other than laborers were used to transfer a load from a bad order car. The Employes argued that "such work has always been done by laborers and that such work is covered by the scope rule of the agreement." After stating the facts and quoting the part of the scope rule relied on by the Employes, your Board in denying the claim held:

> "The rule does not describe the work covered by the agreement, but simply lists the various workers covered. It does not make the work exclusive to them. There has been no showing of a violation of the rule."

Your Board came to the same conclusion in Award 4235, involving the cleaning of freight cars for loading. Here your Board pointed out that laborers have not been used to clean freight cars exclusively at all points on the railroad. From this fact, your Board correctly concluded that the practice at one point is not a controlling interpretation of an agreement which is applicable at all points on the railroad. Your Board held:

> "Under these circumstances the work has not been contracted to the employes covered by the Agreement, and the latter has not been violated. See Awards 2215 and 2845."

In Award 4465, your Board denied another claim which arose at Paragould, Arkansas. There your Board restated the principles of the earlier awards succinctly and emphatically thus:

> "There is no Classification of Work Rule in the controlling agreement here involved, nor does the Scope Rule of the agreement give the exclusive contractual right of the work here involved to the Claimants' Organization."

Applying the principles in the foregoing awards to the instant case, we see that the scope rule of the agreement has not contracted any work to laborers exclusively, including the handling of materials. For that reason, the claim is not supported by Rule 1, the scope rule, which was cited by the Local Chairman in presenting the claim to the Master Mechanic. Laborers have never handled materials exclusively. Helpers are frequently used to pick up material at the storeroom, and a mechanic will go to the store-

room himself when necessary. We pointed out above that substore points have been established in other shops without complaint. The work of handling material has not been contracted to laborers exclusively, nor have they handled materials exclusively as a matter of practice.

As we have seen above, no work has been "transferred" from laborers to any other craft. The burden of proof is on the Employes. In the absence of proving that any work was transferred as alleged, the claim must necessarily be denied. Furthermore, neither Rule 1 nor any other rule of the agreement has been violated for the reasons stated above. The Carrier submits this claim should be denied.

STATEMENT OF FACTS BY THE BROTHERHOOD OF RAILWAY CLERKS: While the petitioners' claim is vague as to just what is involved, this Organization understands through investigation that the dispute and claim involves the handling of supplies between the Carrier's Storeroom and Shops at North Little Rock, Arkansas.

In the year 1965, the Missouri Pacific Railroad completed a new, modern Storeroom, and equipped it with steel shelving as required for certain classes of material stocked. The shelving was all uniform and code and stock numbers were shown on each shelf. Certain color systems were also used for ready identification of supplies and material in the new, highly systematized Storeroom. The materials stored outside of the Storeroom were placed in bins or racks, as determined by the class of material stocked.

All of the materials stocked, stored and issued were handled by employes subject to the Clerks' Agreement. Classifications of Store Department employes subject to the Clerks' Agreement are as follows:

General Foreman

Material Foreman

Store Helpers

Store Laborers

Prior to the installation in the latter part of 1965 of the Electrowriter system in the Shops and Storeroom office, Mechanical Department Foremen in the Shops would write out orders, usually on a Form 900, for the materials they wanted from the Store Department and Mechanical Department Laborers would go to the Storeroom and have the order filled by the Store Department employes. Then the Mechanical Department Laborer would take it back to the Shops where the material was to be used.

With the advent of the Electrowriter system late in 1965, Electrowriters were located at various locations in the Shops, and when a Mechanical Department Foreman wanted materials he would write out in longhand on the Electrowriter the description of materials wanted, and that information was simultaneously transmitted to the Storeroom, where it was received on a machine for that purpose.

Upon receipt of that order in the Storeroom office, a Storehelper uses a small three-wheel cart or truck called a Cushman Truckster and goes about the Storeroom gathering the materials requested on the order. When he has gathered the materials, he then makes delivery of it to the Shops and

leaves it at the location near the Electrowriter ordered from, in a space marked off by painted lines on the floor, which area the Carrier considers is a substore point, where the Mechanical Department employes are in charge.

POSITION OF BROTHERHOOD OF RAILWAY CLERKS: It is, first of all, the position of this Brotherhood that the Second Division of the National Railroad Adjustment Board does not have proper jurisdiction over the dispute here involved. Clearly, the dispute which System Federation No. 2, Railway Employes' Department, AFL-CIO (Firemen and Oilers) have progressed to your Board involves work which is currently being performed by Store Department employes represented by this Brotherhood. Under the provisions of the Railway Labor Act, as amended, jurisdiction over disputes involving Store Department employes is vested in the Third Division of the National Railroad Adjustment Board. The Second Division is a statutory body which has been established in accordance with the Railway Labor Act, and must confine itself to the jurisdiction established for itself by the Railway Labor Act; it cannot lawfully give consideration to disputes involving Store Department employes.

Aside from the fact that the Second Division of the National Railroad Adjustment Board does not have jurisdiction over this dispute inasmuch as said dispute involves Store Department employes, the Second Division does not provide representation to employes represented by this Brotherhood, which is equal to the representation it provides to employes represented by the Firemen and Oilers, the Organization which is the petitioner in this case. The Firemen and Oilers are directly represented in membership at the Second Division, whereas this Brotherhood is excluded from such membership, and while the representatives of the Firemen and Oilers and the Carrier are privileged to participate in all deliberations of the Second Division, including panel argument and executive session, representative of this Brotherhood is excluded from such deliberation. Accordingly, this Brotherhood would be denied due process should the Second Division undertake to decide the dispute which involves Store Department employes.

The work here involved is work subject to the scope and operation of the Clerks' Agreement.

The following rules of the Clerks' Agreement are here involved:

"RULE 1.

SCOPE - EMPLOYES AFFECTED

These rules shall govern the hours of service and working conditions of the following classes of employes that come within and under the craft or class of clerical, office, station and storehouse employes, subject to the exceptions noted below.

Clerks:

Clerical workers, telephone switchboard operators and machine operators of office or station mechanical equipment used in the performance of clerical work;

Other office and station employes such as:

Office boys, office girls, messengers, waybill and tag filers and assorters;

Operators of office machine or equipment devices such as devices for perforating, addressing envelopes, numbering claims and other papers; mimeographing and duplicating machines and machines used to perform work of a like nature;

Train announcers and gatemen;

Yard, train and engine crew callers;

Baggagemen, baggage, mail and parcel room employes (other than clerks) including baggage and mail foremen, assistant foremen and mail stowers;

Station helpers;

Office, station, warehouse and storehouse watchmen (except licensed police officers);

Matrons, red caps and ushers;

Office and station janitors, charwomen, scrubwomen, porters and elevator operators;

Laborers employed in and around stations and warehouses;

Supply Department employes, such as:

Material Supervisors,

General Foremen,

Foremen,

Sub-Foremen,

Chauffeurs and Truck Drivers,

Tractor Operators,

Operators of Automotive or Electric Driven Equipment, such as HILO Machines, etc.

Store Helpers, including Commissary Store Helpers and employes assigned to check or watch time clocks or cards,

Oilhouse Men,

Supply Car Men and Helpers,

Operators of Shears used in cutting scrap,

Seamstresses,

Scrap Sorters,

Grain Door Plant Employes,

Janitors,

Messengers, Office Boys and Office Girls,

Laborers employed in and around storehouses and storage docks where Supply Department material and supplies are kept.

RULE 2. CLASSIFICATIONS

(a) Employes who regularly devote four hours or more per day to writing and calculating incident to keeping records and accounts, writing and transcribing letters, making bills, reports and statements, and similar work, and to the operation of office mechanical equipment, such as typewriters, calculating, bookkeeping, accounting, key punch, tabulating, photostat and recordak machines, dictaphones and similar equipment used in the performance of clerical work shall, unless otherwise mutually agreed to by the signatories hereto, be classified as 'A' Clerks or Machine Operators.

NOTE 1: The foregoing shall not be construed to apply to:

(1) Employes engaged in assorting tickets, waybills, etc., operating appliances or machines for perforating, addressing envelopes, numbering claims or other papers, adjusting dictaphone cylinders, and work of like nature, gathering or delivering mail or performing other similar work not requiring clerical ability;

(2) Office boys, office girls, messengers or other employes doing similar work;

(3) Employes performing manual labor not requiring clerical ability.

NOTE 2: Clerical work occurring in a spread of eight or nine hours will not be assigned to more than one position not classified as Class A position for the purpose of keeping the time devoted to such work by one employe below four hours per day.

(b) Other office and station employes, such as:

Office boys, office girls, messengers, waybill and tag filers and assorters;

Operators of office machine or equipment devices such as devices for perforating, addressing envelopes, numbering claims and other papers; mimeographing and duplicating machines and machines used to perform work of a like nature;

Baggagemen;

Train announcers and gatemen;

Yard, train and engine crew callers;

Station helpers;

Office, station, warehouse and storehouse watchmen (except licensed police officers);

and Supply Department employes, such as:

Material Supervisors,

General Foremen,

Foremen,

Sub-Foremen,

Chauffeurs and Truck Drivers,

Tractor Operators,

Grain Door Inspectors,

Cross Cut saw, Rip saw, Nailer and Assistant Nailer Operators in grain door plant,

Operators of Automotive or Electric Driven Equipment, such as HILO Machines, etc.

Store Helpers, including Commissary Store Helpers and employes assigned to check or watch time clocks or cards,

Oilhouse Men,

Supply Car Men and Helpers,

Operators of Shears used in cutting scrap,

Seamstresses

will be classified as 'B' employes.

(c) Baggage and mail foremen, Assistant Foreman and Mail Stowers, baggage and mail handlers at Little Rock, matrons, red caps, ushers, office and station janitors, charwomen, scrubwomen, porters and elevator operators, and laborers employed in and around stations and warehouses, and

Supply Department employes, such as:

Scrap sorters, grain door plant laborers, janitors, messengers, office boys and office girls and laborers employed in and around storehouses and storage docks where Supply Department material and supplies are kept, will be classified as 'C' employes.

RULE 3. SENIORITY

(a) Seniority of an employe, other than laborer, shall date from the date and time he begins compensated service in the district where employed.

RULE 5.

SENIORITY DISTRICTS AND ROSTERS

Seniority districts over which employes covered by this Agreement will be permitted to exercise their seniority are as follows:

* * * * *

SUPPLY DEPARTMENT

System On-Line Offices:

'A' employes . . . One seniority district and roster.

This seniority district and roster will be comprised of new Class 'A' employes hired (including machine operators), and Class 'B' and Class 'C' employes promoted to Class 'A' in the Supply Department on line-of-road subsequent to February 1, 1954.

Western Territory, comprised of stores located at Dupo, St. Louis, DeSoto, Sedalia and Kansas City:

'B' employes . . . One seniority district and roster.

Southern Territory, comprised of stores located at Little Rock and Alexandria:

'B' employes . . . One seniority district and roster

Point:

'B' employes at each point . . . One seniority district and roster

These seniority districts and rosters shall be comprised of employes promoted from the Class 'C' seniority districts or newly hired at a Supply Department point subsequent to September 1, 1955.

* * * * *

'C' employes at each point . . . One seniority district and roster"

It has always been the exclusive work of Storehelpers, subject to the Clerks' Agreement, in the Supply or Store Departments to dispense materials to employes of other crafts who appeared at the Storeroom with appropriate order from those with authority to place an order for material.

As we understand, the Carrier considers the material ordered by the Electrowriter system and delivered by Storehelpers to the designated sub-Store Departments in the Shops where the Electrowriters are located, as being in the custody of the Supply or Store Department. But, after the material is delivered by the Storehelper to the sub-Store Departments in the specified or designated areas in the Shops, it becomes Mechanical Department material.

The Clerks' Organization holds that the handling of materials is the exclusive work of employes subject to the Clerks' Agreement until delivery is made of it to the point where the Store Department releases its custody of the material.

The new system installed by the Carrier does not remove from the scope of the Clerks' Agreement the handling of the material until the material is released from the custody of the Store Department.

This Organization holds that the Petitioner's claim should be denied.

(Exhibits not reproduced.)

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe 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 dispute involves the issue as to whether or not the work in question is reserved exclusively to petitioners herein under the Scope Rule of the Agreement governing the parties to this dispute.

The undisputed facts are that at the company's mechanical department facilities at North Little Rock, Arkansas, laborer employes would present material and supply requisitions at the company's storeroom to be filled by store helpers and the material and supplies would then in turn be delivered by the laborer employes to mechanics or to a designated area. On December 3, 1965, Carrier abolished two laborer positions covering this work. Carrier installed an Electro-writer system whereby normally a foreman would write a requisition request on an Electro-writer and the store helper would then fill the order and deliver the requested material and supplies to mechanics or to a designated area.

The Organization's position is that the transfer of the work in question from the laborers to the store room helpers violates the Scope Rule of the Agreement; that by custom, historical practice and tradition the work here in question has been performed exclusively by laborers.

The Carrier's position is that there wasn't a "transfer" of work from the laborer employes to any other craft; that the Scope Rule of the Agreement does not grant to laborer employes exclusively the work here in question.

The Brotherhood of Railway Clerks filed a reply in this dispute, wherein it alleges that the work involved herein is subject to the scope and operations of the Clerks' Agreement.

Examination of the Scope Rule of the Agreement shows that it does not specifically define or describe the work of the petitioners under the Agreement. Conversely, it merely lists different classes of employes for whom hours of service and working conditions are governed by the Agreement. Therefore, inasmuch as the Scope Rule is a "general scope rule", the well-established principle of this Board is that the burden is on the Organization to prove by competent evidence that the type of work here in question has been exclusively reserved to the Laborers, system wide — historically, traditionally and customarily.

The record indicates that "exclusivity" has been shown regarding the work in question at this location, namely, North Little Rock, Arkansas. However, no proof was presented by petitioners indicating a system-wide showing of "exclusivity".

Therefore, inasmuch as the Scope Rule is lacking in specific language indicating an intent to assign the work in question exclusively to the laborer employes in addition to a void in the record establishing that such work has system wide by tradition, historical practice or custom been exclusively reserved to the petitioners herein, we are compelled to deny the claim.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 25th day of September, 1968.

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