

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Don Hamilton, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES**

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5716) that:

(1) The Carrier violated the terms of the then effective agreement between the parties when on or about June 1, 1963, the Carrier established at Kansas City, Missouri a non-scheduled position of Terminal Manager--TOFC and removed work from the Scope of the Clerks' Agreement and assigned such work to the occupant of the newly created position.

(2) Mr. Edward Kelley, occupant of Inbound Train Clerk Position No. 10 and/or his successor, now be allowed four hours pay at the time and one-half rate of the position for each work day, beginning October 21, 1963 and until the violation is corrected.

(3) Mr. H. L. Williamson, occupant of Waybill Checker-Typist Position No. 23 and/or his successor, now be allowed four hours pay at the time and one-half rate of the position beginning October 21, 1963 and until the violation is corrected.

EMPLOYEES' STATEMENT OF FACTS: On June 1, 1963, the Carrier established at its Kansas City, Missouri Terminal a non-scheduled position of Manager-Trailer on Flat Cars (TOFC), and appointed Mr. W. O. Patterson to this position. An office was established for Mr. Patterson in a house trailer near the piggy-back ramps in the north section of the 19th Street Yards. It was at first assumed by the Organization that Mr. Patterson was a solicitor of TOFC freight or working in a supervisory capacity for the handling of this phase of the Carrier's business, however, the Carrier then proceeded to remove from the Scope of the Clerks' Agreement all work in connection with TOFC which had been performed by clerical employes and assign it to Mr. Patterson, who holds no rights under the Clerks' Agreement to the performance of such work.

Mr. Patterson is now handling the pick-ups and deliveries, the making of reports and forms as to the number of trailers and flat cars in the terminal and makes ground check of the yard to obtain the information required on the

negotiations were consummated. It appeared that it was Mr. Bissell's position that the TOFC supervisor's position should be manned by a clerk. He felt that Mr. Patterson was keeping records and passing information to Springfield lining up flat cars to be spotted to ramp and lining up trailers to be spotted on the flat cars and all of this work should be performed by the clerical forces."

See Carrier's Exhibit A-8.

The Carrier notified the Organization by letter dated June 19, 1964, a copy of which is attached hereto and made a part hereof as Carrier's Exhibit A-9:

"It is understood that the Terminal Chairman recognized in his handling with the Superintendent Terminals that the disputed work is outside the scope of the current Clerks' Agreement and that such work is involved in certain handling between the Organization and this office under Section 6 of the Railway Labor Act, as amended."

In its July 13, 1964 letter, a copy of which is attached hereto and made a part hereof as Carrier's Exhibit A-10, the Organization stated in part:

"I have handled with Mr. Bissell, Terminal Chairman, at Kansas City and he has stated to me that he has in no way recognized that this disputed work is outside of the Scope of the current Clerks' Agreement.

I am requesting that you and the undersigned go to Kansas City at your earliest convenience and make an on-the-ground check to determine how much and to what extent work that our clerical forces formerly performed has been removed from our agreement and turned over to the outsiders who hold no right to the performance of such work."

The Organization's request was denied July 16, 1964, and a copy of the Carrier's letter is attached hereto and made part hereof as Carrier's Exhibit A-11.

The claims were given conference handling on August 5, 1964, and on January 20, 1965 the Organization served notice on the Executive Secretary of this Division of its intent to file an ex parte submission with the Board.

(Exhibits not reproduced.)

OPINION OF BOARD: This claim results from the initiation by the Carrier of trailer-on-flat-car service at Kansas City, Missouri. The Organization contends that certain work was removed from the position of chief clerk to the agent at Kansas City and assigned to the newly created position of terminal manager-TOFC.

Since the contention is that the Carrier violated the agreement by assigning clerical work to the occupant of a non-scheduled position, we are confronted with what is generally called a Scope Rule case.

The Scope Rule, in effect, in the agreement of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, is ordinarily categorized as general in nature. It, therefore, does not define or describe work per se.

Since the Scope Rule is general in nature, it becomes incumbent upon the Organization to prove that the work claimed has become reserved to this craft to the exclusion of other crafts, through practice, custom and tradition. This, of course, is usually considered to be a question of fact and one which may be proven by a preponderance of evidence.

In the instant case, the Organization has failed to prove by competent evidence that the work involved has become reserved through practice, custom and tradition.

It is significant to note that on February 20, 1961 and December 18, 1963, the Organization served formal notice under Section 6 of the Railway Labor Act, of its desire to change the Scope Rule, in regard to this question. Award 19372, a First Division award, says,

"This Division often has stated that to ask for a rule change is one of the best ways to indicate in the party's own estimation that it is needed to supply the authority to do what the proposed language covers. * *"*

The Organization also argues that the claim should be sustained for failure of the Carrier's representative to participate in an on-the-ground check.

This Division said in Award 12739,

"That the Board will not require a Carrier to assist those asserting a claim against it is well established."

After a careful examination of the record and the authority cited, we are of the opinion that the claim should be denied.

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 not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 9th day of March 1967.

Keenan Printing Co., Chicago, Ill.

Printed in U.S.A.