

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23485
Docket Number CL-23985

John B. LaRocco, Referee

PARTIES TO DISPUTE: { (Brotherhood of Railway, Airline and Steamship clerks,
{ Freight Handlers, Express and Station Employees
{ Elgin, Joliet and Eastern Railway Company

STATEMENT OF MM: Claim of the System Committee of the Brotherhood
(GL-9434) that:

1. The Carrier violated the Clerks' Agreement when on February 8, 14, 15 and 22, 1980, It required and/orpermitted an employe not covered by the scope of the governing Agreement to perform work covered by the scope thereof.

2. The Carrier shall now be required to compensate Clerk Anton J. Berta for eight (8) hours' pay at the pro rata rate of the position of Crew Dispatcher for February 8, 14 and 15, 1980 respectively, and for eight (8) hours' pay at the rate of time and one-half of the position of Crew Dispatcher for February 22, 1980.

OPINION OF BOARD: Claimant contends the Carrier deprived him of work which is reserved to Crew Dispatchers under the Scope Rule (Rule 1) when the Carrier permitted the train dispatcher to compile and disseminate data concerning the line-up of incoming trains on February 8, 14, 15 and 22, 1980. The crew dispatcher obtains the necessary data from the train dispatcher, converts the information into a specified form report and then distributes the report to designated employee. The Organization argues that, on this property, the work is exclusively reserved to clerical employes assigned as crew dispatchers on the basis of a long standing historical practice and because the Carrier's "Crew Dispatcher's Manual" assigns the duties to crew dispatchers. In the manual, crew dispatchers are instructed to prepare and distribute an inbound train line-up at four-hour intervals each day. The Carrier concedes that the train dispatcher performed the work on the dates in question but raises three major defenses. First, the Carrier claims the train dispatcher can efficiently and expeditiously compile the Line-up since he is the source of the information contained in the report. According to the Carrier, the preparation and distribution of the report is incidental to the train dispatcher's primary duties. Second, the Carrier alleges that the practice of using crew dispatchers to prepare the line-up became obsolete in 1973 when the train dispatcher moved into the same building occupied by the crew dispatcher. The Carrier, therefore, asserts that the current claim is barred by laches and estoppel because

the **Employees should have** raised the claim in 1973. **Lastly**, the Carrier urges us to deny the claim because the **claimant** has failed to **prove** that the broad Scope Clause **covers this particular work**. Furthermore, the **Carrier states** that the **Crew Dispatcher's Manual** is Irrelevant since it **was** unilaterally **issued and not** the product of collective bargaining.

On **this** property, the record presented to us clearly shows that **employees** in the position of **crew** dispatcher have **historically** and exclusively **performed** the task of preparing and delivering the report on Incoming trains. Once **this exclusivity is** obtained, the Scope Rule protects the activity, and the **work cannot be removed** except through collective negotiations. Third Division Awards No. 20839 (Franden); and No. 21382 (Lieberman).

None of the **Carrier's** defenses are applicable. **First**, clerical work often involves the compilation and distribution of information. It is a vital function which in this case has been reserved to the **crew dispatchers**. Though the train dispatcher now works in close proximity to the crew dispatcher, the location of the **employees' workplace** does not automatically reduce the **established duties** of the crew dispatchers. **Second**, we find no evidence that the train dispatcher has been regularly assigned to prepare the line-ups. Even if such an assignment had occurred, it would be in direct conflict with both the **exclusivity concept** and the **Carrier's** cm manual. **Lastly**, as we stated before, the Organization has proffered sufficient evidence demonstrating that the work is **exclusively** reserved to the **claimant**. The Scope Rule on **this property is** specific: enough to encompass this work. Thus, the **Carrier** improperly deprived the **claimant** of work on February 8, 14, 15 and 22, 1980.

Under the **circumstances**, the claimant is entitled to receive two hours of pay at the rate of **time and one-half** for each of the four days set forth in the claim.

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 **Employees** involved in this dispute are respective⁴ **Carrier** and **Employees** 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

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That the Agreement was violated.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

A. W. Paulson
ATTEST: _____
Executive Secretary

Dated at Chicago, Illinois, this 8th day of January 1982.

