

PROCEEDING BEFORE PUBLIC LAW BOARD NO. 1605

AWARD NO. 36

CASE NO. 63

April 15, 1977

PARTIES TO DISPUTE:

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

vs.

LOUISVILLE AND NASHVILLE RAILROAD COMPANY

STATEMENT OF CLAIM:

Claim of the SCL/L&N and Southeastern System Board of Adjustment No. 3, BRAC, that:

1. (a) Carrier violated Rules 1 and 2 of the Clerks' Agreement when on the 17th day of December 1974, it caused, required or permitted Assistant Trainmaster R. W. Barbaree, (Employee not covered by Clerks' Agreement) to handle (receive, copy and deliver) request for switching service and releases of loads and empties from patrons in switching districts 1, 2 and 4 for use by crews involved at Carrier's Chattanooga (Wauhatchie Yards), Tennessee. Clerks were ready and available to perform this work but were not used.

(b) Carrier shall compensate the senior idle clerk, extra in preference, Seniority District No. 47, December 17, 1974, for one day (8 hours) at the rate of \$5.52 per hour (pro rata trace clerks rate on such seniority district) for the violation aforesaid.

2. (a) Carrier violated Rules 1 and 2 of the Clerks' Agreement when on the 20th day of December 1974, it caused, required or permitted Car Inspector M. L. Morgan, (employee not covered by Clerks' Agreement) to handle (receive, copy and deliver) request for switching service and releases of loads and empties and relay such information (in writing) to the foreman of switching crew, Job 209, at Wauhatchie Yard, Chattanooga, Tennessee. Clerks were ready and available to perform this work but were not used.

(b) Carrier shall compensate the senior idle clerk, extra in preference, Seniority District No. 47, December 20, 1974, for one day (8 hours) at the rate of \$5.52 per hour (pro rata trace clerks' rate on such seniority district) for the violation aforesaid.

FINDINGS: This Board upon the whole record and all the evidence, finds that:

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

This Board has jurisdiction over the dispute involved herein.

OPINION: The claim is based on the allegation that the Carrier violated the Agreement by permitting two supervisors to perform clerical work at Wauhatchie Yard, Chattanooga, Tennessee, on December 17 and 20, 1974. The work involved in the allegation consists of two instances in which the supervisors talked with customers about their switching requests, reduced such requests to writing, and delivered such requests to Carrier Employees for implementation. The Trace Clerk at Wauhatchie Yard, according to the Organization, should have performed the work of handling these requests.

A description of the duties of the Trace Clerk, contained in a June 1970 manual of the operations of the clerical force at Wauhatchie Customer Service Center (BRAC Exhibit D), includes the following passage:

"Receive request for switching service and releases of loads and empties and relay such information to the Yardmaster, Chief Train Clerk and others concerned."

The record thus makes it clear that the Trace Clerk's duties normally include the handling of the disputed work, and the Carrier concedes as much. However, the Carrier says that it is not unusual for officials and supervisors in the Operating Department at

Chattanooga to talk to customers and accept their requests for switching, and that the Organization has made no complaint about this situation before and after the dates of the instant claim. As in prior cases relating to complaints about officials and supervisors performing Agreement-covered work, both parties discuss the nature of the instant Scope Rule, the Organization saying that officials and supervisors cannot perform such work because the Scope Rule is specific and the Carrier saying that the contra obtains because the Scope Rule is general.

On the whole record it is found that the disputed work was assigned to the Trace Clerk in the regular course of the conduct of the operations of the Customer Service Center at Chattanooga, and that such work was performed by two supervisors in the manner and on the dates asserted by the Organization. The record contains no evidence on which to find that the work was performed as part of the duties of the supervisors, or as an incident to the performance of such duties. Consequently, the claims have record support and they will be sustained. Although the Carrier's suggestion that the supervisory actions complained of herein have been condoned by the Organization has been carefully considered, the instant record at best reflects the fact of silence on the part of the Organization. Silence, without more, does not establish condonation and thus no significance attaches to this facet of the case. It is noted that even when the fact of condonation is established in a case of this kind, that fact may affect the determination of prior alleged violations but it does not prevent the Organization from enforcing its rights to prevent officials and supervisors from future acts of

improper performance of clerical work.

It is further noted that the resolution of a complaint about an official or supervisor performing clerical work does not depend in any way upon whether the Scope Rule is specific or general. As was pointed out in Award No. 8 of this Board (July 13, 1976), the resolution of such a complaint is governed by the principle that Carrier officials and supervisors may perform any craft work which is incidental to their official or supervisory duties. Stated conversely, work which is not incidental to official or supervisory duties may not be performed by officials or supervisors. Final mention is made of the Organization's reference to Award No. 2 of this Board (April 8, 1976), and the Organization's quotation therefrom which reads as follows:

"The Carrier's first defense is not supported by the authorities, as it is well settled that Rule 1(b) is patently a specific rather than a general rule. Third Division Award No. 7129 and Award No. 11, P.L. Board 1321, this property. Therefore, the exclusivity doctrine is not involved in this dispute."

The above statement was made in the context of a dispute about the performance of clerical work at Louisville, Kentucky, by Mr. Steinert, an official or supervisor not covered by the Agreement and consequently, as previously pointed out in Awards Nos. 8, 14, et al., of this Board, the determination of the dispute did not require a determination of the question of whether the instant Scope Rule is a specific or general rule. The quoted passage from Award No. 2 of this Board does refer to the instant Scope Rule as a specific one; however, as the herein Neutral has stated to the parties in oral hearings, such passage was in the nature of dicta because a


ruling on the question of the nature of the Scope Rule was not essential to the determination of the dispute in Award No. 2 and such passage is not deemed to be a ruling on that question. In sum, the question of the specific or general nature of the Scope Rule on this property had not yet been ruled upon by this Board. That question is now before the Board in Case No. 50 and will be ruled upon after the Board has completed its study of the numerous conflicting authorities that the parties have submitted for Board consideration.

The instant claim, however, relates only to the issue of whether supervisors improperly performed clerical work as alleged by the Organization. The record requires an affirmative finding on this issue and the claims will be sustained.

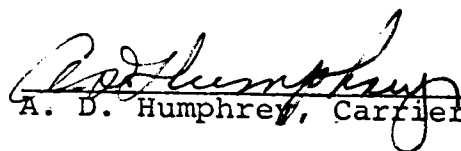
AWARD: Claims sustained.

The Carrier shall comply with this Award within thirty (30) days from the date hereof.

By Order of Public Law Board No. 1605.

  
Fred Blackwell, Neutral Member

  
E. J. Neal, Union Member

  
A. D. Humphrey, Carrier Member

Louisville, Kentucky  
April 15, 1977