Award No. 15014

Docket No. CL-15900

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION
John H. Dorsey, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES

CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5848) that:

1) Carrier violated, and continues to violate, the Clerks' Rules Agreement at Bensenville, Illinois when it established a position in the General Superintendent's Office to perform work of car distribution and other related clerical work and unilaterally assigned such work to an employe outside the scope and application of that Agreement.

2) Carrier shall now be required to return all work of Car Distribution and other related clerical work to the employes covered by the scope and application of the Clerks' Agreement.

3) Carrier shall now be required to compensate employe J. Materno, his successor or successors, for eight (8) hours at the time and one-half rate of Car Distributor Position 0424 for December 1, 2, 3 and 4, 1964, and for all subsequent working days until the violation is corrected.

EMPLOYES' STATEMENT OF FACTS: At Bensenville, Illinois the Carrier maintains a position of General Car Supervisor, which is within the scope of the Clerks' Agreement and is covered by Rule 1(b) thereof.

The Carrier also maintains a position of Car Distributor identified as Car Distributor Position No. 0424, which is covered by all rules of the Clerks' Agreement, the duties of which consist of distributing of equipment and preparing the necessary reports in connection therewith.

Employe J. Materno, who has a seniority date of February 17, 1937 in Seniority District No. 30 is the regular occupant of Car Distributor Position 0424.

The fact that the Carrier has maintained these positions at Bensenville for years to perform the car distributing and related work at that location, the Employes believe, constitutes recognition by the Carrier that work in connection with car distribution and car records is work falling within the scope of the Clerks' Agreement.

On August 1, 1964 Carrier established a position in the office of the General Superintendent at Bensenville, Ill. of "Special Representative to the

functions thereof do not in any way relate to the definition of a clerk nor does the work of such Official positions fall within the scope of the Clerks Agreement or any other labor contract in effect on this property.

Were the positions of Special Representative to the Superintendent not in existence the work of such positions would be performed by the Superintendent or some other Division Officer designated by the Superintendent.

There is attached hereto as Carrier's Exhibit "A" copy of letter written by Mr. S. W. Amour, Assistant to Vice President, to Mr. H. C. Hopper, Acting General Chairman, under date of May 7, 1965. (Exhibits not reproduced)

OPINION OF BOARD: This case involves the same parties and issues as in Award No. 14682. The following language from that Award is equally applicable to the instant case:

"The record does not reveal the particular work or the amount of it allegedly wrongfully taken from clerks. Clerks' Submission consist only of statements of ultimate facts not proven by substantial evidence of probative value. The burden of proof is Clerks. It failed to satisfy the burden. We, therefore, must deny 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 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 Claim fails for lack of proof.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 8th day of December 1966.