

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19265
Docket Number CL-19164

Gene T. Ritter, Referee

PARTIES TO DISPUTE: ((Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
(Union Pacific Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6893)
that:

1. (A) Carrier violated the currently effective agreement between the Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees and the Union Pacific Railroad Company when, on May 11, 1969, they required the Telegraph Operator at Idaho Falls, Idaho to bill a carload of horses, work traditionally, historically, customarily and normally performed by the incumbent on position of Livestock Bill Clerk at that point.

(B) Carrier shall now be required to make Claimant, Clerk Mrs. M. L. McHan, whole by compensating her in the amount of five (5) hours and twenty (20) minutes at rate of time and one-half for the position of Livestock Bill Clerk (\$593.68 per month) for date of May 11, 1969, the amount she would have earned had the violation not occurred.

2. (A) Carrier violated the currently effective agreement between the Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees and the Union Pacific Railroad Company when, on June 15, 1969, they required the Telegrapher at Idaho Falls, Idaho to bill Car UP-48928 containing horses to El Monte, California, work historically, customarily and traditionally performed by the incumbent on the position of Livestock Bill Clerk at that point.

(B) Carrier shall now be required to make Claimant, Clerk Mr. W. A. Storer, whole by compensating him in the amount he would have earned had violation not occurred; namely, five (5) hours and twenty (20) minutes at the rate of time and one-half rate of position of Livestock Bill Clerk (\$593.68) per month.

OPINION OF BOARD: Claimants each held the position of Livestock Bill Clerk at Idaho Falls, Idaho. On claim dates, each of Claimants were enjoying their regularly assigned rest day and Carrier instructed and permitted employees not covered by the involved Agreement (Telegrapher-Clerk) to prepare way bills on certain carloads of horses. The Organization contends that Rule 41(1), the same being known as "Work On Unassigned Days" Rule is the only issue involved in this dispute; that under this Rule, the Organization does not have the burden of proving exclusivity; and that the Carrier had the absolute duty to utilize these Claimants for the involved work. Carrier alleges that the involved work is assigned to and performed by Telegraphers as well as Clerks during their regular work week; that the preparation of Way Bills can be performed by both Telegraphers and Clerks; and that the Organization has failed in its burden of proof to show that Claimants had exclusive right to the work or exclusive assignment thereof.

This Board has no argument with the contentions of either of the parties to this dispute. This dispute involves the "Work On Unassigned Days" Rule, and the Organization does not have the burden of proving exclusivity. However, the criteria that determines disputes of this nature is not only whether or not Claimants normally performed the involved work; in order to sustain the claim, it must be shown that the Telegraphers in this instance, did not normally perform this work during their regular work week. In the instant case, there is evidence that Claimants normally performed the involved work during their work week. However, there is also evidence to the effect that Telegrapher-Clerks also performed the involved work during their regularly assigned work week. Had the Telegrapher-Clerks in this instance performed the involved work only on Claimants' unassigned days, this claim would have been sustained. However, the facts are otherwise in this dispute.

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 respectively 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 not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: E. A. Killen
Executive Secretary


Dated at Chicago, Illinois, this 9th day of June 1972.

LABOR MEMBER'S DISSENT TO AWARD 19265 (DOCKET CL-19164)
(Referee Ritter)

For the reasons set forth in Labor Member's Dissent to Award 19219 (Docket CL-17583) and Award 19220 (Docket CL-18040) (Referee Ritter), a dissent is registered to this Award involving the Work On Unassigned Days Rule.

Attention is also directed to Award 19267 (Docket CL-18544) (Referee Hayes) adopted shortly after Award 19265 was adopted. Award 19267 correctly applies the Work On/Unassigned Days Rule.

Award 19265 is palpably in error and for this reason, I dissent.



J. C. Fletcher,
Labor Member
6-13-72