

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19267
Docket Number CL-18544

Thomas L. Hayes, Referee

(Brotherhood of Railway, Airline & Steamship Clerks,
(Freight Handlers, Express and Station Employees
PARTIES TO DISPUTE: (
(Duluth, Missabe and Iron Range Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6741)
that:

(1) Carrier violated the effective Clerical Agreement, particularly Rules 1, 25, 35(a), and 37(a), when the work of the Car Distributor position of this Craft and Class was performed on Claimant's rest days on September 14, 1968; and December 21, and 28, 1968, by Carrier employees not of this Craft and Class.

(2) Claimant W. R. Smith shall now be compensated for a call, two (2) hours at time and one-half, at the rate of pay of Car Distributor for September 14, December 21, and 28, 1968.

OPINION OF BOARD: Claimant W. R. Smith, was regularly assigned to the position of Car Distributor, Steelton Station. The position had been located in the past at Missabe Junction Station until it was abolished and re-bulletined at the new location, Steelton Station on June 27, 1968.

Claimant Smith occupied the Car Distributor position at the time it was abolished at Missabe Junction Station and was the successful applicant for the position of Car Distributor at the new location, Steelton Station in July of 1968.

On Claimant's rest days of September 14, 1968, December 21, and December 28, 1968, certain work was performed by the Agent at Missabe Junction and it is alleged by the Organization that this work belonged to Claimant, W. R. Smith, Car Distributor, Steelton Station.

The disputed work is described in the following paragraphs:

On Saturday, September 14, 1968, the Agent at Missabe Junction ordered five DM&IR gondola cars from Endion to be sent to Missabe Junction for placement by the Northern Pacific Railway at Hallet Dock No. 6.

On Saturday, December 21, 1968, the Agent at Missabe Junction ordered three DM&IR gondola cars from Proctor to be delivered to Missabe Junction for placement by the Northern Pacific Railway at Hallet Dock No. 6.

On Saturday, December 28, 1968, the Agent at Missabe Junction ordered five DM&IR gondola cars from Proctor to be sent to Missabe Junction for placement by Northern Pacific Railway at Hallet Dock No. 6.

The Organization asserts that the performing of work on September 14, December 21 and 28, 1968, by the Agent at Missabe Junction, as described above, is violative of the Agreement and that Claimant was entitled to this work by reason, inter alia, of Rule 25(j) which reads as follows:

"WORK ON UNASSIGNED DAYS

(j) Where work is required by the Company to be performed on a day which is not a part of any assignment, it may be performed by an available or extra or unassigned employee who will otherwise not have forty (40) hours of work that week; in all other cases by the regular employee."

In the case before the Board, there is no contention that the Agent at Missabe Junction was an extra or unassigned employee under the effective Agreement and under the "work on unassigned day" rule of such agreement.

The Board finds that the Agent at Missabe Junction performed the work of the Car Distributor, Claimant W. R. Smith when he ordered cars on September 14, 1968, December 21, 1968 and December 28, 1968 and that Claimant was entitled to this work because there was no employee covered by Rule 25(j) who did not have forty (40) hours in this week.

The Carrier contends that the Organization did not prove that Car Distributors have the exclusive right, by custom and practice, to the disputed work. We would respond to that by saying that Rule 25(j), the Work on Unassigned Day Rule, is specific and prevails over any general rule, including the Scope Rule. (See Award 18245)

After a review of the record, we are persuaded that Carrier violated Rule 25(j) when it permitted the Agent at Missabe Junction to order cars on September 14, December 21 and December 28, 1968, as hereinbefore described.

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;

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That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was violated.

A W A R D

Claim sustained.

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.