

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19283
Docket Number CL-15522

Claude S. Woody, Jr., Referee

(Brotherhood of Railway and Steamship Clerks,
(Freight Handlers, Express and Station Employees
(

PARTIES TO DISPUTE: (

(Soo Line Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5718)
that:

1. The Carrier violated our current rules and working agreement when, at Neenah, Wisconsin, on November 16, 1963 and thereafter, the work of booking cars performed by employees subject to the scope of the Clerks' working agreement employed at the Neenah freight and yard office was transferred to the Neenah passenger station and performed by Telegraphers, employees not covered by the scope of the Clerks' Agreement, such transfer and reassignment of work being in violation of Rule 1, among others, of the Clerks' general rules and working agreement, and also in violation of Article VIII of the August 21, 1954 Non-Ops National Agreement; and

2. The Carrier further violated the provisions of Rule 40 of the Clerks' general rules and working agreement when the officer with whom claims were filed, failed to render a decision on the initial claims within sixty (60) days from the date of filing; and

3(A). The Carrier shall now be required to pay Messrs. T. Ales and F. Lindsley, claimants, working at Neenah, Wisconsin, a day's pay each at the punitive rate of time and one-half for November 16, 1963, and each and every day thereafter including rest days and holidays that the Carrier continues the violation as stated in Claim (1), and subsequent violations under the provisions of Rule 40 (CLAIMS AND GRIEVANCES) as outlined in Claim (2).

(B). The Carrier shall now be required also to pay Mr. F. Luebke, claimant, working at Neenah, Wisconsin, a day's pay at the punitive rate of time and one-half for November 22, 1963, and each and every day thereafter including rest days and holidays that the Carrier continues the violation as stated in Claim (1), and subsequent violations under the provisions of Rule 40 (CLAIMS AND GRIEVANCES) as outlined in Claim (2).

(C). Such claims to continue until the violations of the clerical agreement rules are eliminated and discontinued and the work improperly transferred and assigned to telegraph service employees is returned to and performed by clerical employees.

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OPINION OF BOARD: This claim results from the allegation by the clerks that the Carrier removed work from a clerical position and assigned it to a telegrapher.

Both petitioner and respondent presented allegations to this Board on a series of alleged procedural errors by the other party. We find no merit to any of these allegations and will consider the claim on its merits.

It should also be noted that the claim was presented for violations occurring in November of 1963, and that the passenger station involved herein was closed September 29, 1967, and therefore, the issues involved in the meritable dispute terminated September 29, 1967.

This is a so-called third party case and we find, after careful examination of the record, that the same conclusively illustrates that the proper third party notice was given and that all of the requirements set forth by the United States Supreme Court in *TCE Union vs. Union Pacific Railroad Company*, 385 U.S. 157 (1966) have been complied with and that there are no procedural errors inherent herein and therefore the case is properly before the division for determination on the merits.

The claims, at page 5 of their initial submission state that with the exception of the procedural matters disposed of above, "this dispute would solely involve the questions of whether or not the Carrier has the right to take work away from a clerical position on an unrelated point and bring it to and have it performed by a telegrapher."

We think that a better statement of the case would be whether the claimants have proven that the work involved herein belongs exclusively to them so that the action of the Carrier in assigning the same to the telegraphers constitutes a violation of the Agreement.

We hold that neither the clerks or the telegraphers have an absolute exclusive right to the work involved herein, and we further hold that the Carrier has exercised its managerial prerogative in assigning this work to best meet the requirements of the service and therefore, because the claimants have failed in their burden of proof, the claims must of necessity be denied.

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;

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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

That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: E. H. Killen
Executive Secretary

Dated at Chicago, Illinois, this 22nd day of June 1972.