

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19330  
Docket Number TE-17415

Arthur W. Devine, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,  
( Freight Handlers, Express and Station Employees  
( (Formerly Transportation-Communication Employees Union)

PARTIES TO DISPUTE: (

(Maine Central Railroad Company  
( Portland Terminal Company

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the Portland Terminal Company, that:

1. Carrier violated the Agreement between the parties hereto when, on October 30, 1966, it allowed an Employee from another craft to perform our work.

2. Carrier shall be required to compensate Operator W. D. Graham for 8 hours at time and one half for not being called to work his rest day to do this work that he does on Monday-Tuesday-Wednesday-Thursday-Friday and Saturday.

OPINION OF BOARD: Claimant is regularly assigned to the first trick position at "PN" Rigley Yard, working Tuesday through Saturday with Sunday and Monday as rest days. The position is not filled on Sundays. On Sunday, October 30, 1966, a report, transmitted by Claimant on his assigned work days, was telephoned by a clerk to the telegrapher at a tower within the same terminal for transmission to its final destination.

Claimant filed a claim in the following language:

"Claiming 8 hours at overtime 10/30/66 account clerk phoning X-7 to Tower One."

This claim was progressed on the property on the ground that the incident was a violation of the Scope Rule. It was denied at each procedural level on the property.

Upon presentation to the Board, however, the posture of the claim was changed to the proposition that the use of a clerk and a telegrapher at another office, neither of whom was "the regular employee", violated Article 10(k), the "Work on Unassigned Days" rule of the Agreement.

The Board is precluded from considering this contention because of the well established principle that parties will not be permitted to change the nature of their position from what was handled on the property, and thereby gain an advantage. Award 8484, for example.

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Since the dispute presented to the Board was not handled on the property as contemplated by the Railway Labor Act and Circular No. 1, we have no alternative to dismissing 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 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 claim must be dismissed.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

E. A. Killen  
Executive Secretary

Dated at Chicago, Illinois, this 14th day of July 1972.