

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19364
Docket Number CL-16561

Paul C. Dugan, Referee

(Brotherhood of Railway and Steamship Clerks,
(Freight Handlers, Express and Station Employees
PARTIES TO DISPUTE: (
(New York Central Railroad - Southern District

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6100)
that:

(a) The Carrier violated the Rules Agreement by holding R. L. Brown, Engine Dispatcher-Clerk Caller off his regular position at Petersburg, Indiana, on Decoration Day, May 31, 1965 (day observed by the Nation) and assigning the duties of the position to another employee not covered by the Clerks' Agreement.

(b) The claimant, R. L. Brown, shall be allowed two hours pay at punitive rate for Decoration Day, Monday, May 31, 1965, on account of this violation.

OPINION OF BOARD: Claimant filed this claim on the basis that he was not permitted by Carrier to work his assignment on the Decoration Day holiday, May 31, 1965, in violation of Rules 20, 16 (j) and 44 (b). Claimant contends that these rules were violated when non-clerks performed the duties of Claimant's position on said holiday.

Rule 16 (j) provides as follows:

"(j) WORK ON UNASSIGNED DAYS

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

The facts show that a telegrapher, a Mr. Wheeler, drove Carrier's station wagon to transport a crew on said holiday.

Carrier's defense to this claim is that the Claimant does not have the "exclusive" right to the work in dispute under the Scope Rule of the Agreement or by past practice nor is the work assigned exclusively to employees under the Clerks' Agreement.

We find that Carrier was required under the provisions of Rule 16(j) of the Agreement to have used Claimant for the performance of the work of transporting the crew on said holiday. See Awards 19039, 19024, 18805, and 18700. We will therefore sustain the claim.

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Docket Number CL-16561

Page 2

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 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 28th day of July 1972.