

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19464
Docket Number CL-16892

William M. Edgett, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway and Steamship Clerks,
(Freight Handlers, Express and Station Employes
(
(Erie Lackawanna Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6123)
that:

1. Carrier violated and continues to violate the Clerks' Agreement at Niagara Falls, N. Y., when it requires and permits Operator-Clerks who are not covered by the scope of the Clerks' Agreement, to perform clerical duties at Niagara Falls, N. Y., which are covered by the scope rule and other rules of the Clerks' Agreement and properly belonging to clerical forces covered by said agreement.

2. Carrier shall now be required to compensate C. A. Vassuer, Yard Clerk-Typist, Niagara Falls, N. Y. and/or his successors retroactive sixty (60) days from date of this claim (July 23, 1964), an average of five (5) hours per week at time and one-half his regular rate of pay. Claim to continue for subsequent days until such time as the violation complained of is corrected and the duties of maintaining demurrage records are returned to clerical forces at Niagara Falls, N. Y. who are covered by the Clerks' Agreement. (Claim 1557)

OPINION OF BOARD: The Organization alleges that Carrier has violated its Agreement by assigning Operator-Clerks, not covered by the Agreement, to maintain demurrage records and accounts at Niagara Falls, N. Y.

Numerous awards of this Board hold that under a general scope rule the claimant has the burden of proving that the work in question has been performed exclusively by employees of the class, on a system-wide basis by practice, custom and tradition. To avoid the effect of this strong decisional trend the organization has asserted that the Rule here removes the necessity of such a showing. The Rule has been given an interpretation by this Board in Award No. 16832. There the Board said:

"We find the Scope Rule of the Agreement to be of the general type in that it does not define or delineate work. We have consistently held that with scope rules of this type it is necessary for petitioners to show an exclusive reservation of the work through custom, practice and tradition. We have further held that such proof must be on a system-wide basis where the agreement is system-wide such as it is here."

The record does not show the necessary system-wide, exclusive practice. There is evidence, strongly urged by the organization, that settlement of a claim which was filed in 1949 is conclusive of the merit of this claim. The record is in conflict concerning the resolution of that dispute and the conclusions to be drawn from it. In any event it is clear that it cannot furnish the proof required by the Board's decisions. Under the most favorable possible reading of the settlement it does not show the necessary exclusivity and makes no reference to system-wide practice. Settlement of a claim which clearly disposes of an issue may provide a precedent which the Board should follow. Where, as here, the settlement lacks clarity, and facts which are necessary to make a determination of its import are absent, its value as precedent is diminished. Here, it is not possible to conclude that settlement of the 1949 claim mandates a sustaining award.

Since the record does not contain the proof of exclusive system-wide practice, required by the Board's decisions in many cases and previous construction of this Rule, the claim must 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;

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:


Executive Secretary

Dated at Chicago, this 30th day of October 1972.