

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19820
Docket Number CL-19872

Benjamin Rubenstein, Referee

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

PARTIES TO DISPUTE: (

(Chicago & Illinois Midland Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

1. The Carrier violated the Agreement on January 25, February 8th and 9th, 1972, when it required Mr. C. L. Dunlap to suspend work on his regularly assigned position at Havana, Illinois for the purpose of performing work on a regular assigned position at Pekin, Illinois, during the regular assigned hours of his Havana position.

2. Because of the above cited violation the Carrier shall be required to compensate Mr. E. L. Stone for 8 hours at the time and one-half rate of the General Clerks position at Pekin, Illinois for January 25, February 8th and 9th, 1972, in addition to any other compensation received.

OPINION OF BOARD: Before getting to the merits of this claim, we must rule on a procedural defect raised by the Carrier to the effect that the initial claim was not filed by Claimant with his immediate supervisor, the Superintendent-Havana Coal Transfer Plant but was, rather, filed with the Superintendent - Operating/Transportation. We find that this argument was not advanced by Carrier in correspondence exchanged between the parties on the property, according to the record before us. The Board has continually adhered to the principle that it lacks jurisdiction to consider issues or arguments included in submissions by parties that were not made part of the record on the property. See Awards 18006 (Dugan), 18122 (Dorsey), 18442 (Dorsey) and numerous others. We will procede to the merits of the claim.

Petitioner contends that Claimant, Mr. Stone, should have filled the three 1-day vacancies on the position of Chief Clerk-Cashier located in Pekin but, instead, Mr. Dunlap was required to vacate his regularly assigned position and travel some 25 miles from Havana to fill the vacancies. As a result, Carrier violated the Absorbing Overtime rule which provides:

"RULE 47. ABSORBING OVERTIME

Employees will not be required to suspend work during regular hours to absorb overtime."

We must note that, had Claimant been utilized on these vacancies, he, too, would have been required to forego performance of some of his regular duties, which would have placed him in the same position, as, Petitioner claims, Mr. Dunlap was, when Carrier utilized his services on the dates and hours in question. Petitioner admits that Claimant Stone is the regularly assigned Gate Operator-Clerk

at Havana Coal Transfer Plant and also is assigned to work on Tuesday and Wednesday, as is Mr. Dunlap, on his regular position.

There is no showing by either party in the record that a furloughed employee was available to fill the position on the said three days. Carrier contends that Mr. Dunlap was not only the older employee, seniority-wise, between the two, but he (Dunlap) held a position in the Transportation Department in which the vacancies occurred, while Claimant, Mr. Stone, was working in the Havana Coal Transfer Plant, under the jurisdiction of another supervisor, who had no jurisdiction over the position in which the vacancies occurred.

Carrier states that the work, positions and employees are not interchangeable between the Havana Coal Transfer Plant and the Transportation Department, even though both are on Roster No. 2; that no employee in another department under different supervision and jurisdiction, such as traffic, accounting, mechanical, purchasing, store, engineering, as well as a coal transportation department employee, such as Stone, could be aggrieved; and that the blanking of operating-transportation department positions due to excused absences or failure of their incumbents to report does not prohibit authorization of overtime to other employees in that department (Dunlap). There is no specific denial by the Employees of these contentions by the Carrier, either in correspondence on the property or in presentation to the Board, and the Employees did not file a rebuttal in answer to Carrier's submission to the Board.

Under all the circumstances of this record, we are unable to conclude that the Petitioner has sustained his burden of proof, that Carrier violated the Agreement in this instance and, therefore, we will dismiss the claim.

We will not address ourselves to the question of whether or not Mr. Dunlap absorbed overtime which might have accrued to others within the Transportation Department, since no other employee in the Transportation Department made claim in that regard.

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

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The Carrier has not violated the Agreement.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: EA. Killen
Executive Secretary

Dated at Chicago, Illinois, this 20th day of June 1973.