

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20322
Docket Number CL-20373

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship
(Clerks Freight **Handlers**, Express and Station
(**Employees**
(
(Detroit, Toledo and **Ironton** Railroad **Company**

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood
(CL-73401 that:

1. **Carrier** violated Rules 1, paragraphs **(d)2,(d)3;**
Rule 24, as **well** as other related rules of the Clerks Agreement, in
the Purchasing Department, **commencing** August 17, 1971, when the Car-
rier arbitrarily **and** unilaterally transferred work assigned to posi-
tions covered by our rules agreement to officials who are not covered,
and

2. Carrier be required to compensate Ms. M. **Vranesh** eight
(8) hours pay beginning August 17, 1971 and four (4) hours for each
Saturday, **and**

3. Carrier be required to compensate Claimant **Vranesh** for
each day the violation continues **and/or** the successors as set forth
in Employees' submission.

OPINION OF BOARD: The **Organization** alleges a violation of the Scope
Rule, stating that Carrier allowed purchasing
agents and **assistants** to perform certain duties which belonged to a
position which had been abolished.

The Organization relies, in the main, on Paragraph **D** of the
Scope Rule:

"(d) **Employees who** occupy the positions listed in (c)
of Rule 1 may perform work incidental and necessary to their
regular assigned duties and temporarily assist other **employees**
on occasions but **work normally performed** by other **employees**
shall not be permanently transferred or assigned to the
positions listed in (c) without discussion and approval of
the Local Chairman which approval shall not unreasonably
be withheld.

"This Agreement shall not prohibit **employees** not covered by this Agreement **from performing** clerical work incidental and necessary to their regular assigned duties, providing such assigned duties do not come within the purview of this Agreement. No work **normally** performed by **an employee covered by the Agreement shall** be performed, transferred or assigned to an **employee not** covered by this Agreement without discussion and agreement between the Management and the Local **Chairman...**"

In addition to its position on the merits, the Carrier has raised a procedural question in its Submission to the Board. The Carrier contends that the Organization's Statement of Claim is at substantial variance with the initial claim as submitted and handled on the property.

The Carrier notes that the initial claim stated:

"Claim in behalf of M. Vranesh, Clerk-Purchasing Department, Seniority Date **8/28/44**, District No. 3, No. 26 of the current roster, Hours of assignment **8:00** A.M. to **4:30 P.M.**, Rate of pay, \$36.96 per day, Rest days, Saturday and Sunday, and that said claimant be paid her daily rate of pay **at** the punitive rate, plus any subsequent increases due her **commencing** Aug. 27, 1971, also including four (4) hours for Saturday when either Mr. Sanford and Mr. Messinger perform clerical work which comes under the purview of the **agreement**, and for every work day until these violations are corrected."

The Carrier **notes** the following "variances" between the initial claim and that submitted to the Board. Initially, there is a difference in dates, i.e., August 17, 1971 versus August 27, 1971. Secondly, it is noted that one claim speaks in terms of eight hours of pay, **whereas** the other claim requests that Claimant be paid a daily rate at the punitive rate. Thirdly, the claim submitted here requests compensation for Claimant and/or the "successors" which was not included in the original claim, **and** finally, one claim is more descriptive in language than the other.

It has been held by this Board, on a number of occasions, that if there is a substantial variance between the claim as submitted on the property and that presented to this Board, we are unable to resolve the dispute (Award 20017). However, after a thorough consideration of the entire record, and careful review of the **State-**

ments of Claim which are allegedly **at** variance with each other, we do not note a basis for dismissing the dispute. We are unable to note that the alleged variance misled **the** Carrier concerning the basic dispute (See Award 19034), and both the Organization and the Carrier **submitted much** of the same **correspondence** concerning the handling of the claim on the property. The difference **in dates** does not **appear** to have operated to the **prejudice of** the Carrier, and, in fact, constitutes a reduction in the **amount of compensation** sought. **More-over**, we do not feel that addition of the word "successors" is fatal to a consideration by this Board of the merits **of** the dispute. See, for example, Awards 19917, 19034, 18950. Accordingly, we do not find merit in the Carrier's procedural argument.

Concerning the merits of the alleged violation of the Scope Rule of the Agreement, we are **unable** to find that the Organization has submitted a substantial **preponderance** of the evidence to establish a violation. For **example**, it is alleged that purchasing agents **and** assistants performed certain enumerated tasks on a regular basis:

- "A. Matching **Ann** Arbor invoices to confirming purchase orders.
- B. Writing of Purchase Orders
- C. Inserting vendors name, address, fob, shipping point, terms of payment, pricing and routing on **DT&I** Form 9702 for both roads.
- D. Tracing of materials
- E. Ricing of orders
- F. Posting **of last prices**
- G. Passing of **invoices**
- A. Issuing of **Purchase** Orders
- I. Issuing of Sales **and** delivery orders
- J. Posting and matching of **DT&I** Forma: M-662, AA-663 and A-778.
- K. Obtaining records from files and filing **same**. This being done to get ordering information from previous orders. M. **Vranesh** has a list of the majority of vendors with all the **necessary information** required.
- L. Posting of inquiries, **DT&I** Form A-206
- M. Holding orders on desk to process upon arrival of Purchase notice, Invoice or Stock Cards.
- N. Making copies on **Thermo-fax** machine.
- O. Operates Graphic Science Machine exclusively."

After a period of time, when the matter was being handled on the property, the parties agreed to jointly check the **operation**. The joint check did not resolve the dispute, and both parties urge that the check supports its respective position.

After a thorough review of the record, we are unable to conclude that the joint check establishes a violation of the **Agreement**. With respect to Item "A", a check indicated that the purchasing **agent** had been performing said work "**for** years." Regarding Item "B", a check indicated that clerks, purchasing agents, and assistants all **wrote** purchase orders, at least as far back as 1964, and on occasion the purchase orders were written jointly.

Item "C" is a continuation of "B" and Item "D" appears minimal. Only two traces were recorded, both in 1969. One was done by a clerk and the other by a purchasing agent.

Items "E" through "L" have been jointly performed by clerks, purchasing agents and assistants, at least as far back as 1963. The joint check demonstrated no positive assignment of work to the **Claimant** or fellow clerks who were **employed** in the department at the time. In other **words**, the work would be performed alternately by purchasing agents **and/or** their assistants, and by clerks.

Item "M" merely relates to the location where purchase orders were held.

In Item "N", we note that the Organization's representative who participated in the joint check admitted that the Thermo-fax machine is available to all **employees**.

Regarding Item "O", it appears that the Assistant Purchasing Agent has used the graphic science machine exclusively since its installation.

We note that Rule 1(d) states:

"This agreement shall not prohibit employees not covered by this Agreement from performing clerical work incidental and necessary to their regular assigned duties..."

As stated above, our thorough review of the record fails to establish to the Board that the purchasing agent and his **assistant** have done anything more than performing work incidental and necessary to their regular assigned duties.

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: *A. W. Pauls*
Executive Secretary

Dated at **Chicago**, Illinois , this **12th** day of July **1974**.