

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number **20607**
Docket Number CL-20691

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, **Airline** and **Steamship**
(Clerks, Freight Handlers, Express and
(Station Employee
(
(The Baltimore and Ohio Railroad Company

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brother-
hood (GL-7517) that:

(1) Carrier violated the Agreement at Glendale Freight Office, Glendale, Ohio, when it failed to call MC. Paul M. **Mason** to work on Saturdays, February 5, 12, 19, and 26, 1972, and each subsequent Saturday, **and**

(2) Mr. Paul M. Mason shall be paid 8 hours' pay at overtime rate (daily rate \$33.99) plus all subsequent general **wage increases**, for the Saturday dates of claim until the violation is corrected.

OPINION OF BOARD: The Organization urged, on the property, a violation of Rule.1 (Scope) and **Rule 4(b)2** (Work on Unassigned Days.) Rule **4(b)2** states:

"Rule 4 - Overtime

(b-2) Where work is required by the Management 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."

While there is dispute as to the precise status of the record, it appears that the following factors gave rise to the claim.

Prior to June 4, 1973, two (2) clerical positions (represented by the Organization) and one agent position (covered by the T/C Agreement) were assigned at the Glendale, Ohio Freight Office.

In early June, 1973, the parties merged the Clerk-T/C Agreements.

In February, 1972, Carrier altered the work schedule of the Agent, and work which he previously performed on Saturdays, at an overtime rate, was assigned to a Relief Agent.

The Organization states that Claimant's duties, on his regular Monday through Friday **assignment**, included preparation of empty return waybills and related clerical work. The Relief Agent performed that same work on Saturdays. Thus, Claimant urges a violation of the "Scope" and "Work on Unassigned Days" Rules from **February**, 1972 through June 4, 1973, and a violation of the latter rule since June, 1973.

Carrier states that the Agent did all of the clerical work prior to July **10**, 1969, when the first clerical position was established to aid and assist the Agent, and that the Agent continued to do all types of clerical work on Mondays through Saturdays since that time. Further, Carrier notes that Claimant never asserted a violation of the rules until February, 1972, when Carrier ceased paying overtime for the Saturday work, but rather, included it within a relief assignment.

The parties have argued the question of "exclusivity." While that doctrine may be pertinent to the question of "Scope Rule" violation, it is not applicable to a determination of a violation of Rule **4(b)2**. See Award 20605, citing Awards 18346, 19219, 19322, 19439 and 20187.

However, in order to prevail, Claimant has the burden of showing, not only that the complained **amount** of work was normally performed by him during his regular work week, but that the work was not also performed, on a normal basis by another position. **See** Award 20605. See, also, Award 19322.

In this regard, Carrier advised the Organization, on the property, that the relief employee (on Saturday) was performing only work which was done by the Agent during the week (Monday through Friday) and which the Agent had formerly done on Saturday. This information **was** apparently obtained from the Agent, and would appear to show that an employee, other than Claimant, performed the work as a normal part of his regular assignment; which has a significant bearing on an alleged violation of Rule **4(b)2**.

The Organization attached to its Submission, as Exhibit No. 1, a statement from the Agent which is contradictory to his statement referred to above. Although the Organization states, in its Submission, that all data "herein submitted," has been submitted "in substance" to Carrier, Carrier denies that Exhibit 1 was ever presented to it.

The Exhibit, which is addressed "TO **WHOM IT MAY CONCERN**", does not show, on its face, whether it was forwarded to any Carrier Official.

Numerous Awards of this Board have long held that matters which were not presented to the opposing party, while the matter was being considered on the property, may not be considered by this Board. While there is conflict as to whether Exhibit 1 was presented to Carrier, Claimant's generalized statement should not overcome Carrier's specific denial; especially when the Organization has the burden of proof.

While the legal contentions of the parties are clearly **drawn**, we do not feel that this record contains a significant showing that Claimant has **carried** the burden of proof of a violation of Rule **4(b)2** for the reasons recited above. Moreover, for the same reasons, we are unable to conclude, from this record, a violation of Rule 1. Accordingly, we will dismiss the claim for failure of proof.

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 be dismissed.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at **Chicago**, Illinois, this **31st day of January 1975**.