

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

**Award Number 20942
Docket Number CL-20851**

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: { **Brotherhood of Railway, Airline and Steamship
Clerks, Freight Handlers, Express and
Station Employees**
(**Chicago, Milwaukee, St. Paul and Pacific
Railroad Company**

STATEMENT OF CLAIM: Claim of the **System Committee of the Brotherhood
(GL-7588)** that:

1. Carrier violated the **Clerks' Ruler, Agreement at East Moline, Illinois** when it used a **DRI&NW** Railway Switchman to perform clerical work on Cashier **Position No. 20860**

2. Carrier shall now be required to compensate employee **R. O. Kehl** for **eight (8) hours** at the time and one-half rate of **Position 20860** for the following dates: **Jan. 3, 4, 5, 8, 9, 10, 11, 12, 15, 16, 17, 18, 19, 22, 23, 24, 25, 26, 28, 29** and **30, 1973**.

OPINION OF BOARD: The dispute herein is based on the allegation that Carrier used an individual who was not a bona fide employee to fill certain vacancies on the dates specified in the Claim.

The essential argument propounded by Petitioner is that Mr. Bunker, the individual who filled the positions in question, was both an extra unassigned clerk with Carrier at the same time he functioned as a Switchman with the **DRI&NW** railroad. Petitioner argues that the work belongs to the employees covered by the Agreement and Bunker was not such a bona fide employee. Further, it is contended that, this Board has ruled that work normally performed determines the "regular employee".

Carrier refers to Rule 3 (a) which states that: "seniority begins at the time an employee's pay starts in the seniority district and on the roster to which assigned." Carrier states that Bunker established seniority on December 13, 1972 when he worked a vacancy because of the regular incumbent's illness. Further Carrier states that Bunker resigned from the **DRI&NW** on December 10, 1972 and got his regular assignment on Carrier's property on January 31, 1973. During December and early January it is readily admitted by Carrier that Bunker worked a few assignments as a switchman for his former employer, while waiting for assignments from this Carrier. Carrier argues that the fact that Bunker worked for another Carrier while his status with this Carrier was that of an extra unassigned clerk had no bearing on whether or not he was a bona fide employee.

Apparently Petitioner **is** concerned **primarily** with the fact that **Bunker worked in another** craft during the time he was an **unassigned** clerk. **There** is controversy over the date of Mr. **Bunker's** resignation from the **DRI&NW**; we do not deem this to be of consequence since **his** intent is controlling - rather than the fact of other employment. Petitioner relies in part on Award **No. 2** of Special Board of Adjustment **No. 452** which **involved** the same parties and a related issue; **in that Award the Board held:**

"This &es not mean, however, **that under this Agreement the Carrier has the right to shift employees back and forth from one craft to another. In other words, the hiring must be bona fide. To hold otherwise would render the scope and overtime provisions of the Agreement meaningless.**"

However, the balance of that Award clearly **indicates** that the **intent of the employe** who is thought to be anything other than **bona fide must be determined** by the actions of that individual. In this **case** Mr. **Bunker** began his service as an extra unassigned clerk and subsequently bid on a position and became **regularly** assigned, as indicated above. The fact that **Bunker's overlapping employment** was with **another railroad has no significance** whatever; he **could** have been a school teacher or had any **other type of employment so long as he did not work for this Carrier** in another craft. As we said in Award **10299** (and also supported **in** Award **20462**) which **involved** the **same** parties herein:

"**The fact that he had outside employment, does not in and of itself prevent him from being a bona fide employe. As an employe he is entitled to such rights as the Agreement provides - no more, or less.**"

The record herein **reveals** that the Organization has failed to support its **claim with evidence that any rule has been violated. In view of this conclusion, we do not** deem it necessary to deal with the time **limit questions raised by** Carrier.

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

Award Number 20942
Docket Number CL-20851

Page 3

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 30th day of January 1976.