

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21806  
Docket Number CL-21436

Joseph A. Sickles, Referee

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

PARTIES TO DISPUTE: (

(Norfolk and Western Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood,  
GL-7967, that:

1. Carrier violated the Agreement between the parties when on February 18, 1974, Carrier official, **Trainmaster** W. C. Weaver **was** used to **transport** Conductor G. **Klinglesmith** and crew from W-5 Pocket to the Tin Shanty in violation of Rules 1 and 34 (d) of the Clerks' Agreement.

2. Carrier shall **compensate** Clerk J. L. **Perrine** for a holiday call of five hours and twenty **minutes** at punitive rate in accordance with Rule 35 (a).

OPINION OF BOARD: **Claimant** (a mail-janitor), was **assigned** to a 7:45 a.m. to 3:45 p.m. position, **Monday** through Friday, \ On "Presidents' Day" 1974, his position was **blanked** and he received one day of pay at the pro rata rate.

At Noon, on the claim late, a **Trainmaster** transported a crew \ "from W-5 Pocket to the Tin **Shanty**."

The Claimant asserts that the work of transporting crews is assigned to him and **comprises** about 50% of his regular duties. Carrier ~ denies that crew transportation is exclusively Clerks' work and asserts that Supervisors have performed said tasks at **Bellevue** and at other terminals.

Rule 34(d) refers to work which will be performed on a holiday X  
- which is not a part of **any assignment** - by the "regular employee" who is defined as being the "**regular employe** entitled to the **work under** the rules of this **agreement**."

Carrier asserted on the property that work of crew driving "is not now nor has it ever been, work **belonging** exclusively to members ~ of the clerical **craft**," and it specified other **Company personnel** (Supervisors , **Trainmasters**, Foremen, General **Yardmasters**, etc.) and taxi

cabs have performed the function in Company-owned or private vehicles at this - and other - terminal(s). Moreover, Carrier suggests that other **clerical employees** who also transport crew members were on duty on the claim date.

Thus, according to Carrier, we are confronted with a **situation** wherein a Claimant transports crews - as part of his **regularly** assigned duties - as do other clerical personnel on the same shift, and as do Supervisors. Accordingly, there are four individuals to choose **from**.

The Claimant urges that we ignore any assertion that "exclusivity" is the proper "test" to determine the **employee** who should have performed the work. Rather, it is urged that Rule 34(d) controls. But, as we read that rule, we are still required to identify the "regular **employee** entitled to the work under the agreement." The **Employee** relies upon Award No. 20556, concerning these parties, as precedent.

Our concern in this case stem from the fact that various **assertions** concerning the "driver" duties of other Clerical **employees** appear in certain presentations to this Board, but we are not able to find that they were perfected and/or advanced while the matter was pursued on the property. The single paragraph in the April 29, 1974 letter, 'Your above claim is hereby declined as records **indicate** other regular assigned messengers were on duty and available to perform such service as you allege on this date,' was neither repeated nor enlarged upon during the ensuing 15 months before the dispute **was** submitted to this Board and does not appear to **be** the basis for the **declination on the property**. Thus, under the long-established rules of this Board, we are unable to consider the case in the posture ascribed to it by Carrier. Under those circumstances, the dictates of Award 20556 are more closely akin **to** this dispute than a different type of handling below might have produced.

Much has been written concerning the wisdom of adhering to prior Awards **between** the same parties, when the same issues are involved. Quite candidly, we are compelled to note that Award No. 20556 **may** have, to some extent, understated the complexities of the issues involved in this type of a case. **While** we do not necessarily assert that the final result would be the **same** or different had we considered the dispute in the first instance - unaided by extrinsic assistance - nonetheless, we cannot conclude that Award 20556 is palpably erroneous.

Thus, for the reasons expressed and based on the factual posture of this record, we sustain the claim.

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 violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: \_\_\_\_\_



Executive Secretary

Dated ~~at~~ Chicago, Illinois, this 30th day of November 1977.