

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21856
Docket Number MW-21761

James F. Searce, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Chicago, Milwaukee, St. Paul and Pacific
(Railroad Company

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

(1) The Carrier violated, and continues to violate the Agreement when, beginning December 14, 1974, instead of calling and using Caboose Supplyman P.A. Esposito to service cabooses, it used employees outside the scope of the Agreement and who did not theretofore perform service of that character at Savanna, Illinois (System File C# 65/D-1845).

(2) The claim* presented by General Chairman R. O. Chambers on December 19, 1974 to Roadmaster L. L. Pauli is allowable as presented because said claim was not disallowed by Roadmaster L. L. Pauli in accordance with Rule 47.

(3) For the reasons set forth in either or both (1) and (2) above, Caboose Supplyman P. A. Esposito be compensated at his time and one-half rate for all time consumed by P.F.I. men servicing cabooses on unassigned days (Saturdays and Sundays) and on his regularly assigned work days continuing until the aforesaid violation is discontinued.

(*) The letter of claim presentation will be reproduced within our initial submission.

OPINION OF BOARD: Effective December 6, 1974, the Carrier abolished the position of Lampman-Cabooseman at the Savanna, Illinois, facility. Up to that date, the occupant of this position regularly relieved the Claimant on his days off-- Saturday and Sunday. Beginning December 6, 1974, and thereafter, the Carrier assigned such work to Perishable Freight Inspectors (PFI) represented by the Brotherhood of Railway..Clerks.

The Organization asserts that, as a result of the job **abolishment**, the Carrier is obligated to assign such work on the Claimant's rest days according to Rule 23 (k) which reads as follows:

Rule 23 - FORTY HOUR WORK WEEK - **REST** DAYS - HOLIDAYS

"(k) Work on **Unassigned Days**

Where work is ^{not} ~~required~~ by the carrier to be performed on a day which is ~~part of any~~ assignment, - it may be performed by an available extra or unassigned employee who will otherwise not have 40 hours of work that week; in all other cases by the regular employee."

The Organization thus claims the work. Since there were no unassigned or extra **employees qualifying under** Rule 23 (**k**), the work fell to the **regular employee-the** Claimant.

This case is directly related to Award **21854** in **which** the Organization disputed the Carrier's right to assign work after the Claimant's regular hours on his regular days of work (Monday through Friday) to PFI men, as well. Our decision in that case applies equally here--the Organization has not established its rights to this work at the Savanna facility, since it does not have exclusive jurisdiction over such work System-wide and cannot point to specific provisions of the Agreement reserving such for forces represented by BMWE.

The provision of Rule 23 (k) which applies to the **assignment** of work on unassigned days, where such work is clearly reserved for the craft, is therefore not applicable in this case.

There is, however, the matter of a late denial by the Carrier for a claim made by the organization on behalf of the claimant by letter dated December 19, 1974 for the period commencing December 14, 1974. It covered work as **lampman-cabooseman** on Saturdays and Sundays. In view of the Carrier's untimely response in denying this claim, the **organization's demand** is held to be meritorious, notwithstanding the Board's decision on this matter otherwise. Therefore, assuming it represents the missed opportunities for such work for the claimant from December 14 to December 31, 1974 inclusive, the Carrier's offer for settlement of the late denial spelled out on pages 11 and 12 of its November 26, 1975 letter to the General Chairman (referred to as Carrier's Exhibit "**B**" in the record) is here ordered. The Organization's claim for such work until March 26, 1975 (at **which** time Roadmaster **Pauli denied** the aforementioned claim, referred to as Letter No. 2 in the Organization's record) is held not to be controlling beyond December 31, 1974, since the job was abolished on that date and further opportunities were thus non-existent.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearings;

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

The Agreement was violated to the extent of a late denial by the Carrier as set forth in the opinion.

A W A R D

Claim sustained to the extent described **in the** opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 18th day of January 1978.