

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21882
Docket Number CL-21379

Nicholas H. Zumas, Referee

(Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Empress and Station **Employees**
PARTIES TO DISPUTE: (
(Chicago, West Pullman & Southern
(Railroad Company

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood,
GL-8018, that:

1. The Carrier violated and continues to violate the provisions of the effective Agreement between the parties when it fails and refuses to fill Job No. **13--** Storekeeper Clerk with **employees** covered by the scope of our Agreement, but rather, requires and/or permits an **employee** outside the scope of **our** Agreement to perform **all** necessary work of that position;

2. The Carrier shall now compensate the following **named** claimants for eight **(8)** hours' pay at the time and one-half rate for each and every day listed below, **commencing on October 1, 1974**, and continuing for each and every day thereafter that a like violation occurs :

<u>Claimant</u>	<u>Days Claimed</u>
A. Varco	Monday
J. Ferrara	Tuesday and Wednesday
J. Lee	Thursday and Friday

OPINION OF BOARD: On or about October 1, 1974 the position of Storekeeper Clerk became vacant. Carrier bulletined this vacant position on November 1, 1974, but no bids were received and no **award** of the position was issued. The position **was** filled briefly by an **employee** of the **Organization** in **January 1975**. Effective **May 1, 1975** the position was combined with that of Chief Clerk. **This** claim is made on behalf of three Claimants who contend they should have been called on their rest days on an overtime basis, and assert that Carrier violated the Agreement when it used the Roundhouse Foreman to perform the work.

There are numerous **assertions, denials**, allegations and **counter-**allegations in theex partesubmissions and rebuttal submissions of the parties, but the only evidence this Board can consider **is** that which was presented and handled on the property. In this record it consists of the following:

1. A bulletin dated November 1, **1974** advertising the position.

2. A letter dated January 13, 1975 from Carrier's General Freight Agent to the Organization's **Local** Chairman **as follows:**

"Reference is **made** to your letter dated November 25, **1974**, claiming that position of Storekeeper has been worked by persons other than those falling within the Scope of the Current Working agreement.

We cannot agree with your contention that there is a violation of rules and regulations outlined in the Working Agreement.

The position in question has been advertised numerous **times** and in each instance, clerk **would** bid **off returning to** his old assignment, leading us to believe that no one was interested in working the position outlined in your claim. Latest bulletin **1105** dated November 1, **1974**, no bids received.'

It appears now, we have a large group that are **willing** to work the assignment as Storekeeper, if so, why not contact me and we can make arrangements to make arrangements to award the job to whoever wants it.

Please be advised we are respectfully declining your claim in your letter dated November 25, **1974**."

3. A letter dated **March** 25, 1975 from Carrier's Resident to the Organization's General Chairman as **follows:**

"In your March 4th letter you Informed us that you were appealing claims in behalf **of** three named individuals commencing on October 1, **1974** and claimed at the **overtime** rate on individuals' rest days.

I am sure you have received copy **of** Mr. **Slowinski's** letter dated January **13,1975** addressed to Mr. R. **Adametz** wherein he explained the circumstances and declined the **claims**. I am enclosing a copy **of** that letter for your ready reference and advising you that I uphold his declination."

4. A form letter dated January **24,1975** by an **employe** covered by the Organization's agreement applying for the Storekeeper position.

On the state of this evidence it is virtually impossible to **as-** certain the essential facts necessary for proper resolution of this **dispute**. For **example**: What was the nature of the work in fact performed by an employe not covered by the agreement? How many hours per day did such work in fact entail?

This Board is not at liberty to engage in conjecture or supposition; nor is it allowed to resolve a dispute by **simply** weighing the merits of the parties' self-serving and conflicting versions appearing for the first **time** in their submissions.

Therefore, on the basis of this record the Board has no alternative but to deny 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**;

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That this Division of the Adjustment **Board** has jurisdiction
over the dispute involved herein; and

The Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **Third** Division

ATTEST:

A.W. Paulos
Executive **Secretary**

Dated at Chicago, **Illinois**, this **31st** day of January **1978**.

