

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22537
Docket Number CL-22600

Kay McMurray, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employees
(
(The Detroit & Toledo Shore Line
(Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-8642) that:

1. The Carrier violated the effective Clerks' Agreement when on August 20 and 27, 1977, it required and/or permitted an employe not covered by the scope of the Agreement to perform janitorial work reserved exclusively for employees covered thereby;

2. The Carrier shall now compensate Senior Furloughed Employee Norman Henninger eight (8) hours' pay at the pro rata rate for each of dates August 20 and 27, 1977.

OPINION OF BOARD: Before this Board can deal with the merits of the dispute, we must dispose of the arguments and counter-arguments dealing with the type of conference that occurred between the parties prior to submission of this dispute off the property. From review of the record there is no question that a conference was held. Also, there is no question that the conference was brief and perfunctory. One may ask, does a brief and perfunctory conference meet the jurisdictional requirements of the Act? In this particular case we are of the opinion that the parties' conferences complied with the letter of the law. However, we feel that it was not within its spirit.

We will, accordingly, consider the claim on its merits, but we would admonish the parties to participate in meaningful negotiations and attempt to adjust grievances in conference as contemplated by the Act prior to submission to our Board. Perhaps it would be well for the parties to review Third Division Award 11434 (Bose) and the Supreme Court Opinion in Brotherhood of Locomotive Engineers, et al., v. Louisville and Nashville (373 U.S. 33) (1963), as quoted therein,

With respect to the merits of the claim, we find that on August 20 and August 27, 1977, an **employee** not subject to the terms and provisions of the Clerks' Agreement performed janitorial work in the Yardmaster's tower at Toledo, Ohio. The Organization contends that normally, such janitorial work would be performed by an **employee** working under the terms and provisions of the Clerks' Agreement.

Rule 1(b) of the parties' agreement provides:

"(b) Any work or function of the craft or class of clerical, office, station and storehouse employees now, heretofore or subsequently assigned to employees subject to this agreement, shall continue to be work subject to this agreement irrespective of any change in the means by which such work or function is or may be performed."

We have held **that** such an agreement provision reserves work assigned within the agreement to employees covered by the agreement. See Awards 12903 (**Coburn**), 19719 (Blackwell), 21382 (Lieberman), and 21933 (Sickles).

From the record before us it cannot be disputed that janitorial work at the location involved is normally accomplished by **employees** subject to the Clerks' Agreement.

Under the facts before us and authorities presented, we must 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

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That the Agreement was violated.

A W A R D

Claim sustained.

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

&TEST:

G. W. Paulis
Executive Secretary

Dated at Chicago, Illinois, this 28th day of **September 1979.**
