NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 2264.8

THIRD DIVISION Docket Number MW-22456

George S. Roukis, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(Southern Pacific Transportation Company
((Pacific Lines)

STATEMENT OF CLAIM: "Claim of the System Committee of the Broth&mod that :

(1) The Carrier violated the Agreement when it assigned Grinder/Grinder Helper A. Moreno instead of furloughed Track Laborer I. Mojarro to perform Track Sub-department work at Taylor Yard beginning in June 1975 (Carrier's File MofW 148-401).

(2) Because of the aforesaid violation, furloughed Track Laborer I. Mojarro be allowed pay at his appropriate rate for a number of hours equal to the total expeaded by Grinder/Grinder Helper A. Moreno in performing such work beginning sixty (60) days retroactive from January 26, 1976 and continuing until said violation is discontinued."

OPINION OF BOARD: In reviewing the parties procedural arguments regarding the claim's timeliness, we believe that the evidence demonstrates that the claim filed on January 26, 1976 comports with the essential requirements of Agreement Rule 44 and is properly before us.

Admittedly, the distinctions between a continuing and non-continuing claim are at times, nebulous and indiscriminate, but the assignment "of other duties* in this instance formed a continuous pattern of assignments that went beyond the events of June 1975.

On the other hand, we agree with Carrier that the alleged work performed by the Grinder/Grinder Helper was not explicitly delineated in the documentary record and thus required greater substantive verification.

Claimant's contention that positions or work within a specific seniority sub-department must be reserved for the employes therein is certainly buttressed by the clear language of Agreement Rules 2 and 5 (a) but the interpretative process as defined by this grievance required additional specification.

In the instant case, the record does not show at all what work was improperly performed or the exact time and place of its occurrence. It is devoid of the relevant particulars.

Claimant was under a compelling obligation, given the nature of the claim, to define precisely these work specifics and his failure to provide this information impaired his claim. His repetitive and forceful assertions did not cure this omission.

This Board has consistently held in analagous type cases that claims to disputed work must be supported by an explicit showing that the work in question unmistakably belonged to the petitioning party. It is in essence a demanding factual test. (See for example on this point Third Division Awards 11129, 12774 and 17943.)

There is nothing in the record to show that claimant adequately met this required proof burden and so the claim must be denied on its merits.

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 Carrie and the Employes involved in this dispute are respectively Carrier and Employes 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 not violated.

A W A R D

claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST : Executive Secretary

Dated at Chicago, Illinois, this 30th day of November 1979.