

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award Number 22762  
Docket Number CL-22841

Martin F. **Scheinman**, Referee

(Brotherhood of Railway, Airline and  
( Steamship Clerks, Freight Handlers,  
( Express and Station **Employees**  
PARTIES TO DISPUTE: (  
(The River Terminal Railway Company

STATEMENT OF CLAIM: Claim of the System Committee **of** the Brotherhood  
(GL-8724) that:

1. The **Carrier violated** the **effective** Clerks' Agreement when on December 28, 1977, and January 16, 1978, it required **and/or** permitted an employe not **covered** by the scope of the Agreement to perform **the** work of pricing stores tickets, work reserved to **employees covered** by the Agreement;

2. The Carrier shall now compensate Clerk Francis **J. Volin** for eight (8) hours' **pay** at the time and one-half rate of his position for each of dates December 28, 1977, and January 16, 1978.

OPINION OF BOARD: On the dates in question - December 28, 1977 and January 16, 1978 - petitioner alleges that Carrier utilized a supervisory **employee**, not covered by the Scope of the Applicable **Rules** Agreement, to perform work (**pricing** of Stores Department requisition forms) which properly accrues and should have been **performed** by a clerical employe.

Carrier defends its denial of these claims **on** the basis that, first, the supervisory employe was only "auditing" requisition **forms** and, second, in any event, the work of pricing requisitioa forms is not the exclusive function of clerks and, therefore, the Scope Rule was not violated. Carrier also argued that certain **evidentiary** material submitted by petitioner was presented after the on-property discussion in this case had been completed and, as such, is not properly before this Board.

We will dispense with Carrier's procedural *contention* first.

From the record, it is apparent that during the on-property handling, petitioner in **furtherance** of its **argument** requested that Carrier produce the disputed requisition forms which had been handled by the supervisory employee. This request was denied. Subsequent to the formal discussion of the dispute, petitioner acquired and presented to Carrier copies of the disputed forms, which, they allege, supported their contention that the supervisory **employee was, in** fact, pricing the **forms** and **not merely** auditing them. **This material was presented** to Carrier by letter **dated** October 3, 1978. Carrier made no response whatsoever to this material. The dispute was listed with this Board on December 8, 1978.

The propriety of this Board's acceptance of **material** for consideration which had been presented **on** the property has been adequately addressed by us in Third Division Award No. 20773 where we said:

"\*\*\* Any document **presented** on the property prior to the date of the **Notice** of Intention to File an **Ex Parte** Submission (October 16, 1973 **in** this case) is properly considered by this **Board**. But, we have noted in prior Awards that the **timing** of the submission of certain documents **may** have significant bearing on the credibility, or the weight to be attached, especially if the timing suggests that the other party did not have reasonable opportunity to respond prior to submission to this Board. No such suggestion is involved here because Carrier did not respond."

See also Third Division Award No. 20025.

It is obvious, therefore, that the **material** presented to Carrier by petitioner **on October** 3, 1978 is properly a part of this **case**. Carrier's election to ignore it - **or** at least to **not** respond **thereto - was** done at its own peril.

The Scope **Rule** here involved is a so-called "positions **and** work" rule which is not general in nature. **In** the circumstances present in this case the use of a supervisory **employee** to perform work covered by' the Scope **Rule** constitutes a violation of the Rules **Agreement** **and** we so find.

As to the compensation due, we are unable from the facts of this record to authorize payment of an eight (8) hour day at the **time** and one-half rate as claimed. Petitioner simply has not proven that the supervisory **employee** was utilized for an eight (8) hour period. Therefore, we will award a payment of a two (2) hour call at the overtime rate for each of the two **(2)** dates involved as full, final and complete settlement of this dispute.

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 in accordance with the Opinion.

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

ATTEST:

  
Executive Secretary

Dated at Chicago, Illinois, this 29th day of February 1980.