

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22788
Docket Number CL-22666

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employees
(
(Norfolk and Western Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-8631)
that:

1. Carrier is violating the Agreement between the parties when they allow or permit Section Laborer R. E. Knight to perform work **reserved** to employees covered by the Clerical Agreement.

2. **As** a consequence of the above-stated violation Carrier shall now be required to compensate the senior available or otherwise senior furloughed employee from Seniority District No. 43 (senior available to mean the employee who is regularly assigned wishing same). This pay to be based on the pro rata rate of pay at the applicable Extra Force Time-keeper's rate of pay. This pay to **commence** effective Monday, March 28, 1977, and continue for eight (8) hours each work date based on a work week of Monday through Friday until the violation is discontinued or the position placed under the Clerical Agreement and placed **on** the Bulletin Board for bid from **employees** falling under the clerical agreement.

OPINION OF BOARD: The Organization asserts that on March 28, 1977, a section laborer was assigned to the position of time keeper for Maintenance of Way Employees at **Crewe**, Virginia, and as such, he performed that function for 250 Maintenance of Way Employees.

The Organization asserts that said activity violates the Scope Rule of the **agreement**, as well as certain other **provisions**; and it asserts that - in addition to the merits of: the dispute - the Carrier failed to issue a reply within a **contractually** provided sixty day period so that as a procedural **matter**, the Organization is entitled to relief.

The Carrier argues that the work performed by the section laborer actually **commenced** in November of 1975, and at that time he merely *commenced* preparing reports which were formerly prepared by the individual Maintenance of Way Employees in each-group. Further, the Carrier contends



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that the Organization failed to submit a claim within the contractually provided **time** limits which start to run **from** the date of the occurrence upon which the claim is based.

Concerning our review of the various procedural assertions of the parties, we **have** turned our attention to Awards 20520 and 22508, both of which disposed of disputes between these same parties.

Thus, based upon our review of this record and the precedent established by the two cited Awards as relates to these parties, we are inclined to find that the Organization has sustained its position that the claim was not denied in a timely fashion and, further, pursuant to the cited **Awards**, we will sustain the claim up through and including the date that the Board finds it was denied, i.e., September 29, 1977.

Concerning the period of **time** thereafter, we have reviewed the record at length, but we are unable to find that the Organization has presented to us sufficient evidence to demonstrate that there **was** a violation of the Scope Rule. Accordingly, for the period of time **subsequent** to September 29, 1977, we will dismiss the claim for failure of proof.

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 through September 29, ~1977, and the claim is dismissed for the period of time thereafter, as stated in the Opinion of Board.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 14th day of March 1980.