

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23060
Docket Number CL-23oc9

George S. Roukis, Referee

PARTIES TO DISPUTE:

Brotherhood of Railway, Airline and Steamship Clerks,
{ 'Freight Handlers, Express and Station Employees
(Consolidated Rail Corporation
(Former Penn Central Transportation Company)

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood
(GL-8802) that:

(a) On October 21 and 22, 1975, J. Redifer, incumbent of CC-104 Position at the East Yards Office was on his vacation. This position was then blanked inasmuch as there was no clerk called to fill this vacancy because of the incumbent being on vacation. However, L. Mankin, who holds the Clerk Position, B-15 Clerk in the Trainmaster's Office, was assigned to the CC-104 Position on the dates listed above to perform the duties of Car Control.

(b) On October 21 and 22, 1975, M. E. Moreland, Clerk who holds the B-146 Position at Past Yards, was on his rest days and was home and available to be called to fill the vacancy on the CC-104 Position, but was not called.

(c) Under the Scope Rules and others, (except Rule 4-1-1(b) which covers sick leave), all vacancies will be filled.

(d) Committee finds the Carrier has violated the Scope Rule and others and shall be required to compensate M. E. Moreland eight (8) hours pay for the dates of October 21 and 22, 1975, at the rate of pay on the CC-104 Position which, on these dates, was \$52.80 per day.

(e) Claim has been presented and progressed in accordance with Rule 7-B-1, and should be allowed.

OPINION OF BOARD:

The basic facts in this dispute are as follows:
the incumbent of Position CC-104 at the East Yards Office was on vacation on October 21 and 22, 1975. The incumbent of Clerk Position B-15 in the Trainmaster's office was required to perform the duties of the Vacation position, in addition to his own duties on the above dates. Claimant contends that the incumbent of the B-15 Position, Mr. L. Mankin, was used off his regular assignment to perform the duties of Position CC-104, while Carrier contends that Clerk Mankin worked his regular position and performed a portion of the duties of the CC-104 Position.

In our review of this case, we concur with Carrier that Claimant must demonstrate by **compelling** evidence of probative value that **Carrier's** actions were **improper**. Careful reading of the record, does not show that **Claimant adduced particular and clearly specified rule violations that would reasonably support his petition**. He did not establish that the Scope Rule reserved this work exclusively to the **Claimant** or that the Extra List Agreement precluded **Carrier** from blanking the CC-104 Position. **Moreover, he did not show proof that Mr. L. Mankin performed more than twenty-five percent of the aforesaid position's duties, as per the requirements of Article 10(b) of the National Agreement. A description of the work area and duties of position CC-104 at the Terre Haute Yard, does not by itself provide a quantitative deduction that Claimant performed more than 25% of the position's work. It raises a presumption that requires further numerical verification.**

Claimant's **primary** argument is that a burden was placed on the employe performing this work as well as the employe returning from vacation. But he has not **shown** by concrete irrefutable evidence that Claimant performed more than twenty-five (25%) percent of **this** work or that such **work burdens, in fact, occurred**. Carrier was not estopped from blanking the position and assigning less than twenty-five (25%) percent of its duties to another employe, which the Organization **acknowledged** as the workload limit in its **ex parte** submission and Claimant did not prove that the **incumbent** of Clerk Position B-15 performed more than this amount of work. In Third Division Award 14473, which we believe is **germane** to this dispute, this Board set forth three (3) **interpretative guidelines, which the Organization must observe to prevail in this type Of controversy. We will delineate them hereinafter.**

"We conclude that for the Organization to prevail it had the burden of proving by preponderance of evidence of probative value that: (1) more than 25% of the work load in excess of that normally assumed by the Leading Maintainer in the Vacationing Maintainer's section had been assumed by the Leading Maintainer or (2) a 'burden' had been placed on the Leading Maintainer in the performance of work normally performed by the vacationing Maintainer; or (3) a 'burden' was placed on the vacationing Maintainer on his resumption of duty because of work remaining to be performed."

The record does not show that Claimant met the preponderance test on any Of these criteria in the claim before us. Thus we are constrained 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;

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:

A. W. Pauls
Executive Secretary

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