

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23217
Docket Number CL-23212

George E. Larney, Referee

PARTIES TO DISPUTE:

(Brotherhood of Railway, Airline and Steamship Clerk,,
(Freight Handlers, Express and Station Employes
(
(Chicago, Milwaukee, St. Paul and Pacific Railroad Company

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood (GL-8911)
that:

(1) Carrier violated the Clerks' Rules Agreement at Sioux City, Iowa when it utilized employee outside the scope and application of the agreement to assume duties covered under the scope and application of such agreement on June 28, 29, July 22, 25 and 26, 1977.

(2) Carrier shall now be required to compensate employes R. D. Blessing, R. M. Hoberg, P. Weisz, M. Wensel, E. L. Flair, G. T. Malloy and L. DeGroot each an additional eight (8) hours at the time and one-half rate on each of the claim dates listed at the applicable rates; the applicable rates are to be determined by a joint check of Carrier's records.

OPINION OF BOARD:

The Organization alleges Carrier violated several rules of the Controlling Agreement, effective July 1, 1975, when on the claim dates in question, it utilized the services of pers-1 provided by an outside contractor to perform work of loading grain doors and grain car cooperation at its Sioux City, Iowa facility. The Organization asserts the disputed work has historically been performed at this facility under the scope and application of the Clerks' Rules Agreement.

Carrier argues the disputed work is not now nor has it ever been exclusively assigned to and/or performed by employes represented by the Organization. Thus, Carrier asserts, no violation of Agreement Rules obtained when it utilized the services of personnel supplied by an outside contractor to perform the disputed work.

Upon a review of the central issue, we find a preponderance of the evidence supports the Organization's assertion that the disputed work has indeed been performed by members of its Craft at the Carrier's Sioux City, Iowa location. As to Carrier's primary contention that the Organization must prove exclusivity of the disputed work for its position to prevail, we disagree that this principle is applicable in the instant case, referring the parties to what we said in our Third Division Award No. 13236;

"The exclusivity **doctrine** applies when the **issue is whether Carrier** has the right to assign **certain** work to different crafts and classes of its employees - not to outsiders."

In **addition** to the **basic** dispute at hand, we note the several **minor** points at **issue which** shall be disposed of as follows:

1. **As** there is no evidence in the record to validate the **claim** date of June 28, 1977, it shall be dropped from consideration by us in **disposing** of this case.
2. As there is **insufficient** evidence in the record to support the **number** of claimants **in** whose names this claim was progressed, we rule to **make** our decision **in** this case applicable to the senior **claimant** only, identified by **name** as E. L. Flair.
3. We **find** the applicable rate of pay to be the pro rata rate rather than the time and one-half rate as **contended** by the Organization.

Based on the foregoing discussion and determinations, the Board directs Carrier to **compensate** Claimant, E. L. Flair, eight (8) **hours** pay at the applicable pro rata rate for each of the four (4) **claim** dates of June 29; July 22; July 25; and July 26, 1977.

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 **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 violated.

A W A R D

Claim sustained as **set forth in the Opinion.**

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

ATTEST:

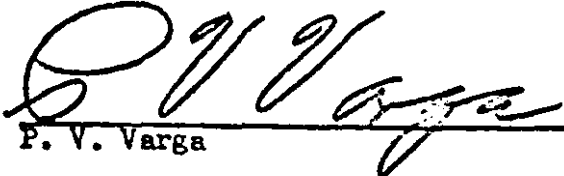
A. W. Paulson

Executive Secretary

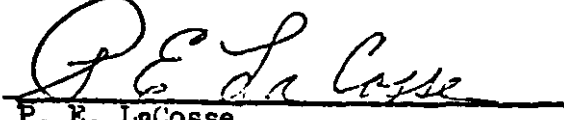
Dated at Chicago, Illinois, this 16th day of **March 1981.**


CARRIER MEMBERS' DISSENT
TO
AWARD 23217, DOCKET CL-23212
(Referee Larney)

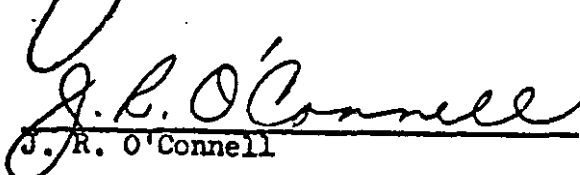
It is evident that the Majority here has **misapplied** the exclusivity **doctrine just** as was done in **Award 13236** upon which this **Award** is founded. **Compounding** error does not **make** it right. For the same reasons noted **in** our **Dissent** to Award 13236, we dissent here.


F. V. Varga


W. F. Euker


P. E. LaCasse


J. E. Mason


J. R. O'Connell