

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23228
Docket Number CL-23175

George S. Roukis, Referee

PARTIES TO DISPUTE: { Brotherhood of Railway, Airline and Steamship Clerks,
Freight Handlers, Express and Station Employees
{ Terminal Railroad Association of St. Louis

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-8946) that:

1. Carrier violated the Rules Agreement between the parties, in particular scope Rule 1, Paragraph (c), when it permitted Mr. John Motta, a Carrier officer of the Norfolk and Western Railway Company to perform routine clerical work in its Madison Yard Office.

2. Carrier shall now be required to compensate TRRA Clerk Fred E. Hell eight (8) hours pay at the pro-rata rate of his regular assignment for July 15, 16, 17, 18, 31, August 3, 10, 14, 16, 18, 21, 22, 26, 27, 29 and 31, 1978.

OPINION OF BOARD: The pivotal question before this Board is whether Mr. John Motta, of the Norfolk and Western Service Bureau, performed work which was properly protected by the Clerk's Agreement, on the dates delineated in the statement of claim.

The Organization contends that Mr. Motta violated Agreement Rule 1 when he used waybills from the Madison PICT Rack to route cars for switching and submitted documentary evidence indicating the type of work he performed. It presented a number list which Mr. Motta apparently marked and routed for switching purposes and a list that the Supervisor marked out and routed for classification purposes. It asserted that he took car orders from the Granite City Street Company, matched waybills with cars and answered telephones and gave information. It submitted letters written by clerical employes indicating the type of work performed by Supervisor Motta.

Carrier, argues that Mr. Motta's activities amounted to nothing more than looking at bills for traffic of his Company, a privilege it accorded to other carriers. It contends that he merely checked the N & W's traffic for routing and switching errors and reported them, which in essence was confirmed by the statements of Messrs. Summers, Duroso, and Johnson submitted on behalf of Claimant. It notes that close reading of these statements indicates that they performed the clerical functions that were involved in the changing of cars.

In our review of this case, we recognize the possibility that a person temporarily assigned to another Carrier to perform administrative oversight functions, such as intended here, when the N&W was struck by the Brotherhood of Railway and Airline Clerks might perform duties of a correlative nature, that are protected by a collective agreement. But we find in this instance that Mr. Motta performed clerks work that was not De Minimus in nature. The Organization adduced documentary evidence depicting that Mr. Motta marked and routed lists of N & W Traffic. It asserted that he pulled waybills, changed routing on such bills, took car orders from another company and matched waybills with cars, etc.. Carrier never adequately refuted these activity specifics or more important addressed the lists that were presented in conference and pointedly noted in the Organization's September 12, 1979 letter. It argued that the clerks statements depicting Mr. Motta's actions confirmed its position, but the contents of those letters indicate more persuasively that he performed clerks work. To be sure, we cannot state that he performed clerk's work exclusively. The nature of his assignment would preclude such an assessment and the aforementioned clerks statements demonstrate that he directed them. But he also performed work ancillary to his main function, that belonged to them.

Contrary to Carrier's position that Agreement Rule 1 is general in nature, we find sufficient specificity in paragraph C thereof to conclude otherwise. The non-supervisory work that he performed was protected by this provision and was more than incidental. It encompassed, albeit inadvertently, significant clerical duties. We agree with the Organization that Carrier's Exhibit C, which is Mr. Motta's October 23, 1978 letter to Mr. C. W. Haynes, was not exchanged on the property, but we find that the contents therein with the exception of his statement that he worked 3 hours per day at TRRA Madison, Illinois were known by the Organizations. This part of the letter is thus inadmissible as per the explicit requirements of Circular No. 1. On the other hand, Clerk James F. Johnson's statement to Local Chairman Scholbe indicates that Mr. Motta arrived at the office between 8:00 AM and 2:00 PM each day. At most this would mean that he worked 6 hours. We do not believe that he spent his entire time performing clerical duties because that would be inconsistent with his primary mission. We do find that he performed clerical duties that were more than necessary to complete his assignment. However, it would be unfair to require Carrier to compensate Claimant 8 hours pay at his prorata rate as it would also be unreasonable to exact 6 hours compensatory payment, when we find that Mr. Motta performed supervisory duties as well. It would be more judicious and consistent with our findings to award Claimant 3 hours pay at his regular assignment's pro rata rate for the days set forth in 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 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 16th day of March 1981.