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S.C.P.
NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24056
Docket Number CL-24288

Rodney E. Dennis, Referee

PARTIES TO DISPUTE: (Brotherhood of **Railway**, Airline and Steamship Clerks
(**Freight** Handlers, **Express** and Station **Employees**
(Bessemer **and** Lake **Erie Railroad Company**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-9500) that:

(1) Carrier violated the **effective** Clerks' Agreement when on November 22, 1979 (November 23, 1979 - Thanksgiving Day), December 24, 1979 (December 25, 1979 - Christmas Day) and January 1, 1980, it-permitted and/or required employes and/or other persons not covered by the scope of the Clerks' Agreement to **perform** work **exclusively** reserved for employes covered thereby.

(2) The **Carrier** shall now be **required to** compensate Clerk J. L. Sturges for **three (3) hours'** pay for each of the **following dates:** November 23, 1979, December 25, 1979 and **January 1, 1980**, at the time and one-half rate of the **posi-**
tion of Clerk - **XB Tower - North Bessemer Yard.**

OPINION OF BOARD: **This** case involves three **(3)separate** claims which were initiated and handled separately but were combined into one dispute for presentation to our Board. Briefly, the claims all center around the allegation that employes not covered by the BPAC Rules Agreement performed work which should accrue to clerical employes at Carrier's **XB Tower** at North **Bessemer**, Pennsylvania.

Both sides **have** advanced various arguments relative to the application of Scope, Days Work and **Overtime**, Holidays, Notified or **Called** for **Service** on Holidays Rules as **well** as contentions relative to possible application of the "de **minimus**" principle and the exclusivity of handling derails. From our **review** of the record in this case and after considering all of the contentions of the parties, we are convinced **that** there is no **need to make** any decision on the **rel-**
ative arguments of **applicable** Agreement Rules or principles. In this record there simply is not found the quantum of proof necessary for us to make a **rules** or principle determination. It is too well settled to require citation of authority, that the moving party in a dispute such as we have here has the burden of proving all essential elements of its claim. (See Awards 20026- Sickles, 20147 - **Lieberman**) In this case, that burden has not been met. We must, there-
fore, deny this 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 **Employee**s involved in this dispute are respectively **Carrier** and **Employee**s within the meaning of the Railway Labor Ad, as **approved June 21, 1934;**

That this Division of the Adjustment Board has jurisdiction over the **dispute** involved herein; and

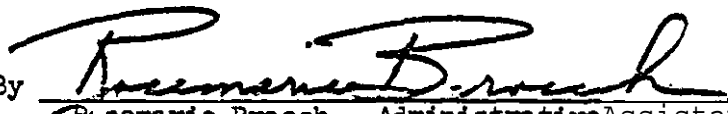
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: Acting Executive Secretary
 National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at **Chicago, Illinois**, this 14th day of December 1982.

