

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24059
Docket Number CL-24441

Rodney E. Dennis, Referee

PARTIES TO DISPUTE: { (Brotherhood of Railway, Airline and Steamship Clerks,
{ **Freight** Handlers. Express and Station **Employees**
(The Baltimore and Ohio Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-9539) that:

(1) Carrier **violated, and** continues to violate, the Scope Rule of the Clerk-Telegrapher Agreement, **commencing** January 2, 1980, and continuing, when it causes and requires employees not covered by the **Agreement** to perform clerical work of transcribing reports and keeping records and other necessary data in connection with **Car** Department Operations at **Parkersburg**, West Virginia, and,

(2) Carrier shall compensate Claimant C. M. **Burkey, Jr.**, eight (8) hours' pay at punitive rate beginning January 2, 1980, and continuing each and all subsequent work dates that Carrier permits and requires non-clerical employees to perform clerical work here made basis of claim at **Parkersburg**, West Virginia.

OPINION OF BOARD: The dispute in this case involves a contention by the Clerk's Organization that **employees** not covered by the **BRAC Agreement** - specifically **Carmen and Car** Department Supervisors - were required at **Parkersburg, West Virginia**, to perform certain work which allegedly accrues to Clerks. The work complained of consists of the preparation by **Carmen and Car** Department Supervisors of reports which reflect the specific duties performed by them.

Because of the possible **involvement** of other labor organizations in this dispute, specifically the Brotherhood of Railway Carmen of the United States and Canada and the **Baltimore and Ohio Railroad** Company Supervisors Organization, notice of the **pendancy** of this dispute was **given to** those **two** Organizations. The **Carmen** submitted argument to the Board which has been reviewed and considered in our determinations of this dispute.

From the Voluminous record in this case, we perceive that the genesis of this dispute is found in the fact that sometime in 1973 clerical position No. **C-102** at **Parkersburg** was abolished. The remaining duties of that abolished position **were, according** to Carrier, "divided between a **Section Stockman** position, held by Claimant **Burkey**, and a Clerk-Typist position in the Office of Terminal **Trainmaster** at **Parkersburg**." The claim in the **instant dispute** was presented to Carrier by letter dated January 20, 1980 with a **claim** date of January 2, 1980. Petitioner argues that "The clerical work formerly performed for the **Trainmaster**, Locomotive and Car Department by Clerk position **C-102** (incumbent **LaVelle** - abolished) was not entirely distributed to other clerical forces in **Parkersburg Terminal** ----." (**Underscore theirs**). From 1973 to 1980 apparently no complaint or claim was made relative to the work here in dispute.

This Referee in Third Division Award No. 23478 said:

"Carrier and claimant have engaged in the same arrangement for a period of eight to ten years. (The record is not precise on this point, but it is agreed that the arrangement has existed for a long period of time.) The Organization cannot now cons forward and complain about such an arrangement by pressing a claim for penalty pay. The Organization, by its acquiescence to the arrangement over such a long period of time, has signaled the carrier that the arrangement in this particular case would not be queried. To now file a claim to tell Carrier that the arrangement that has existed for the last eight or ten years is no longer acceptable is inappropriate and not acceptable procedure in good faith labor relations. *** If the Organization and/or the Claimant wanted to set carrier straight on this issue, they should have, at the outset of the assignment, made their objections known. Given the long period of time during which the arrangement was accepted by the union, its failure to file a complaint bars them from lodging an objection now."

See also Third Division Award No. 15827 (Ives).

In this case too, the employees obviously slept on their rights to complain for more than six (5) years. They cannot now be heard to complain that there was in 19'73 an improper distribution of work.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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;

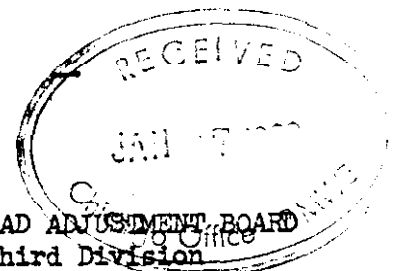
That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division



ATTEST: Acting Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

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