

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24670

Docket Number a-23454

Herbert **Fishgold**, Referee

(Brotherhood of Railway, Airline and Steamship Clerks
(Freight **Handlers**, Express and Station **Employees**

PARTIES TO DISPUTE: (

(The **Detroit**, Toledo and **Ironton** Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9116)
that:

(a) The **Carrier** violated the Rules Agreement dated May 1, 1966, amended January 1, 1971, particularly **Rules** 1, 3, 6, 24, and others, when commencing April 1, 1978, non-agreement employees **performed** clerical duties at Woodhaven Yard **and** no employees covered by this Agreement **were** called to perform these duties. The duties performed included checking of tracks, trains, piggyback trailers on hand, as **well** as furnishing constructive placements to Flat Rock, making piggyback reports, and others. These duties performed by **Yardmasters** on duty in addition to Marketing Department employees and employees of the contractor employed **for** piggyback operations at **Woodhaven** Yard. Joint Inspection by BRAC and **DT&I** of records pertaining to above claim is requested.

1b) The Carrier now be required to compensate the following employees eight hours' punitive pay per day **beginning** April 1, 1978, and continuing until these violations are corrected. This is a continuing time claim for seven days per week, eight hours per day for employees:

1. **J. H. Green**
2. **J. E. Navarre**
3. **R. White**

OPINION OF BOARD: This **case involves** basically the same facts and issues as in CL-23027 which was the subject of Award 23382.

The Organization requested that the instant case be held in **abeyance** **and** disposed of on the same basis as a-23027. The Carrier rejected the request, but offered to have the case incorporated with a-23027. The Organization rejected this offer. The Carrier now alleges that the instant claim is null and void in that a-23027 dealt **with** the same issue.

The Board is satisfied that, while the instant case could have been joined with a-23027, inasmuch as it involves different claimants and dates commencing subsequent to those claimed in U-23027, the matter is properly **before** the Board.

The only difference **between** CL-23027 and the present case are the names, dates and times of the alleged **transfer** of certain clerical work, formerly performed by clerical employees at Rouge Yard, to Yardmasters at Woodhaven Yard with the incidents herein commencing on April 1, 1978.

As Referee **Scearce** held in relevant part, in Award 23382:

"It is apparent in this case that the Yardmasters at Woodhaven have **and** may properly continue to perform those 'incidental and necessary' functions which have historically been performed by them. **However**, the clerical functions relative to the piggyback operations which were 'within the purview of this Agreement' by reason of having been performed by clerical employes at Rouge Yard and on which **there was** no 'discussion **and** agreement between the Management and the Local chairman' prior to their having been transferred and assigned to the Yardmasters at Woodhaven Yard are being performed by the Yardmasters at Woodhaven Yard in violation of this Scope Rule.

As for the allegations relative to the use of the outside contractors, there **is no** probative evidence in this record to indicate that the outside contractor at **Woodhaven** Yard is **functioning any** differently than did the outside contractor at Rouge Yard.

As to the damages issue, we remand this to the parties and direct them to jointly determine on a direct relationship basis the amount of time **-on** a minute basis- consumed by the Yardmasters at Woodhaven Yard incident to the performance of clerical work of the same nature as **formerly** performed by clerical employes at Rouge **Yard** directly related to the piggyback operation only. Payment under this determination is to be made at the pro rata clerical **rate**.

All other aspects of this dispute are found to be unconvincing or inapplicable and are **denied**."

For all the above reasons set forth in Award 23382, the Board herein adopts as its decision in the instant matter the conclusions reached and the relief awarded therein.

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.

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Claim disposed of in accordance with the Opinion.

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

Attest:


Nancy J. Dever - Executive Secretary

Dated et Chicago, Illinois this 24th day of **February**, 1984