

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24810
Docket Number CL-23983

Josef P. Sirefman, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks
(Freight Handlers, Express and Station Employees
(
(Elgin, Joliet and Eastern Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9433)
that:

1. Carrier violated the effective Clerks' Agreement when on various dates in January and February, 1980, it required and/or permitted employees not covered by the scope of the Agreement to perform work reserved for those employees covered thereby;

2. Carrier shall now compensate the following employees for eight (8) hours' pay at the time and one-half rate of an Input/Output Technician position for each of the following days: Mr. J. Bazik - January 7, 8, 9, 10, 11, 14, 15, 16, 17, 18, 21, 22, 23, 24, 25, 28, 29, 31, February 1, 4, 6, 7 and 8, 1980; Mr. W. Spreitzer - January 7, 8, 9, 10, 11, 15, 16, 17, 18, 21, 22 and 25, 1980; Mr. W. Franzen - January 7, 17, 18, 21, 24, 25, February 5, 7 and 8, 1980; Mr. T. Dorre - January 7, 8, 9, 10, 11, 14, 15, 16, 17 and 18, 1980.

OPINION OF BOARD: At issue is the claim that during January and February, 1980 two supervisors performed the clerical work of training three extra board clerks "in the operation of IOT equipment". The Organization contends that this training should have been performed by Input/Output Technicians while the Carrier contends that the Agreement does not exclude Supervisors from providing ongoing training and instruction.

Central to this dispute are the following paragraphs from the June 8, 1979 Extra Board Agreement between the parties:

"4.(a) When an extra board clerk is trained in actual work experience, such training shall be conducted by an employee in service subject to the scope of the basic agreement, whenever practical.

(b) It is also recognized employees not covered by the scope of the agreement may train or instruct as in the past, without penalty to the Carrier.

The Organization maintains that under the scope rule, and practice, clerks perform training on the equipment whereas the Carrier asserts that the scope rule does not exclusively reserve training for the clerks, and that supervisors have always been engaged in training and instruction.

A review of the record before this Board establishes that training for new clerks in the field of electronic data processing is in two phases: formal instruction, and "hands-on", on-the-job training. The former (e.g., a fifteen hour course) is presented by supervisors. It is the latter type of instruction which is contested here. Referee J. H. Dorsey stated in Third Division Award 20382 "The words 'Position or work within the scope of this Agreement belong to the Employees covered herein' have been interpreted by the case law of this Board to mean that work not exclusively reserved to Clerks but assigned to a Clerk's position becomes the work of the position and is subject to the Rules of Clerk's Agreement." This holding has been supported in Awards including 21382, 22762, 21050 (involving the same parties albeit a different factual circumstance), 19179, 22011 and 21933. Taken together with the practice clearly established in the record, of utilizing Input/Output Technicians to provide on the job training on the equipment for new clerks, the performance of such work by the two supervisors during January and February, 1980 was in violation of the agreement. (See Awards 22762 and 21050). The Carrier's position that the Supervisors' availability made it practical to use them without incurring the penalty rate is an economic argument that has been rejected by this Board. In Award 21609 Referee L. Bailer held that "The Carrier's reason for the subject arrangement was economy, which is a laudable objective but an invalid excuse for violating the agreement, if a violation occurred".

Nevertheless, the record does not support an award to claimant at the penalty rate for all the times and hours listed in their claim. Referee M. Scheinman's observation in Award 22762 is appropriate here, "As to the compensation due, we are unable from the facts of this record to authorize payment of an eight (8) hour day at the time and one-half claimed." The claim contains instances of multiple claims for the same shift for the same trainee, as well as claims for full shifts back to back for the same trainee. Therefore, the only shifts which this Board can consider for compensation are those which are free from ambiguity. These are: January 8th midnite to 8 AM J. Bazik; January 9th midnite to 8 AM J. Bazik; January 10th midnite to 8 AM J. Bazik; January 11th midnite to 8 AM J. Bazik; January 14th 4 PM to midnite J. Dorre and midnite to 8 AM J. Bazik; January 15th midnite to 8 AM J. Bazik; January 16th midnite to 8 AM J. Bazik; January 22nd midnite to 8 AM J. Bazik and 4 PM to midnite W. Spreitzer; January 23rd midnite to 8 AM J. Bazik; January 28th midnite to 8 AM J. Bazik; January 29th midnite to 8 AM J. Bazik; January 31st midnite to 8 AM J. Bazik; February 1st midnite to 8 AM J. Bazik; February 4th midnite to 8 AM J. Bazik; February 5th midnite to 8 AM W. Franzen; February 6th midnite to 8 AM J. Bazik. Absent proof that the supervisors were on the equipment with the trainees for the full shift as claimed, the penalty rate of time and one-half is limited to two hours for the Claimant for the shifts listed above. As Referee Scheinman further observed in 22762 "Petitioner simply has not proven that the supervisory employe was utilized for an eight (8) hours period. Therefore, we will award a payment of a two (2) hour call at the overtime rate for each of the two (2) dates involved as full, final and complete settlement of this dispute".

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

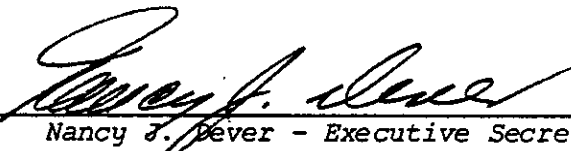
That the Agreement was violated.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 30th day of April, 1984