NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 24811
THIRD DIVISION Docket Number CL-24853

Edward L. Suntrup, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks
(Freight Handlers, Express and Station Employes
(
(Southern Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9663) that:

Carrier violated the Agreement at Asheville, North Carolina, when on various legal holidays during calendar year 1980, it did not fill Cab Supply positions at that location and allowed and/or required persons not covered by the BRAC Agreement to perform work of Cab Supply positions.

For these violations, the Carrier shall now compensate the hereinafter named claimants in the amount of eight (8) hours' pay at the rate of time and one-half for the dates specified by their names:

O. Watley----------February 17, 1980
W. M. Messer----------February 18, 1980
W. M. Messer----------September 1, 1980
D. W. Strickland----------November 11, 1980
B. J. Cureton----------November 26, 1980
W. M. Messer----------November 27, 1980
W. M. Messer----------December 24, 1980

OPINION OF BOARD: It is the position of the Organization that current Agreement Rules A-1, N-3 "and others" of May 1, 1973 between the Organization and the Carrier were violated when Carrier employees not covered by this Agreement performed certain work on the holidays specified in the Statement of Claim. By reference hereto Agreement Rule A-1 is the Scope Rule (amended November 1, 1980) and Rule N-3 is a synthesis of the National Holiday Agreement amended most recently on June 16, 1979.

Substantively the majority of the claims here at bar center on certain non-Agreement personnel who placed items on cabooses on holidays. The specific items in question consisted of buckets of coal and, in one case, some ice. Before ruling on the contract interpretation issues related to these claims, however, the Board will first of all settle the factual correctness of the claims in view of evidence present in the record, and it will also deal with one additional claim which centers on jurisdictional rights to supply lantern batteries to the Carrier Call Office at its Ashville, North Carolina facility.

On February 21, 1980, the Organization filed a time claim on behalf of W. Watley who was allegedly denied holiday work because of buckets of coal which were allegedly put on six (6) different cabs by General Foreman J. Warren. In the record the Carrier provides substantial evidence, not rebutted by the Organization that the claim is in default with reference to Carrier cabs X418 and X745. On factual grounds, therefore, this part of the claim is dismissed.

On December 15, 1980 the Organization filed a time claim on behalf of D. W. Strickland on the grounds that he was allegedly denied holiday work because General Foreman E. D. Cody took a supply of lantern batteries to the Call Office. As moving party in this case it is the responsibility of the Organization to furnish burden of proof that such work had been the exclusive purview of the craft seeking relief under the Agreement Rules cited. A search of the record fails to uncover substantial evidence beyond request for relief and reference to the Rules at bar. Given such lack of evidence the Board cannot but rule that such "fails to meet the requirements of the burden of proof doctrine" (Award 20789; also 22517, 22685 and 20750).

The other claims were filed because various Carrier personnel, including Car Foreman L. Meadows, Service Attendant I. Waters, Shift Car Inspector C. Case, Car Inspector G. W. Grooms and General Foreman J. Warren had either put buckets of coal or some ice on various Carrier cabs on the holidays in question in violation of Agreement Rules cited in the foregoing. An analysis of the Scope Rule of the Agreement at bar shows that it is a general type Rule and the Board is here in accord with a prior Award on this property which held that the moving party, when making reference to a Rule such as this, must show a "prepondenance of...evidence that tradition, custom and practice on the property establishes (this craft's) exclusive right to perform (the) work...(in question)" (Award 14075; See also Awards 19894, 19923 and 19339 inter alia). An analysis of the record fails to produce such evidence. The Scope Rule in the instant case, however, must also be analyzed in conjunction with the Rule covering holiday work for the craft here filing claim. The Board can find nothing in the N-3 Agreement addendum, by itself or in its relationship to the Scope Rule, which per se guarantees this craft prerogatives consistent with its claims in the instant case. The Board must, therefore, resort to the record for guidance with respect to "tradition, custom and practice" and/or other side-bar agreements or letters of understanding concerning the Rules under scrutiny. Of particular interest in this respect is the correspondence on property surrounding the claim of February 21, 1980 for O. Watley, the substance of which a fortiori applies also to the other claims here under consideration. The record shows that in order, apparently, to clarify Carrier practice under the Rules here in dispute a meeting was held between the Carrier and the Organization in January of 1980. The intent of any agreement arrived at on that date by the parties is at the center of the issues here under discussion. Referring to this meeting Master Mechanic R.F. Lentz wrote on April 7, 1980 to Division Chairman Z. K. Cole, who filed all the claims under this Docket, that:

"...It was my belief that you and I agreed in this meeting that in the future cab supply people would be called on a holiday to supply cabs that were placed in the cab track and if a situation should arise where a cab on a train in the train yard needed a bucket of coal, a jug of water, etc., that anyone could perform this duty. However, you told me after submitting this claim that you did not agree to this..." (Emphasis added).

The record shows that in all of the incidents leading to these claims the cabs were not on the cab track, but were outbound cabooses.

Evidently, the Board is here confronted with conflicting evidence with respect to the parties' agreement concerning the interpretation of their contract and numerous precedents establish that under such conditions the Board may not substitute its judgment for that of the Carrier nor set itself up as trier of fact unless the record is subject to some impropriety. (Awards 21612; 22721; 23085). Such here is not the case. In view of this, therefore, and in view of the lack of other evidence on the part of the moving party of probative value to show exclusivity for the work in question under Agreement Rules A-1, N-3 "and others" cited, the claims must be denied.

Further, Organization reference to Award 13137 in support is herein defective because that Award does not address the distinction of supplying cabs on the cab tracks versus in the train yard on holidays which is here the center of controversy as noted above.

This Board's role, as is well known, is limited by the Railway Labor Act to the interpretation of contracts in view of evidence presented to it. The parties to the instant case would be better served in the future if agreements which are arrived at, such as that of January of 1980, were reduced to writing as Letters of Understanding. Such a procedure could have assisted the parties to have avoided the instant dispute in the first place.

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 not violated.

A W A R D

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Nancy J. Dever - Executive Secretary

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