NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 25477
THIRD DIVISION Docket Number CL-25142

Martin F. Scheinman, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes
(Chicago, Milwaukee, St. Paul and Pacific Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9738) that:

1) Carrier violated and continues to violate the Clerks' Rules Agreement at Galewood, Illinois when on May 29, 1981, the duties of supervising the payroll for two (2) Suburban Section Gangs was removed from Track Timekeeper Position 00220, and assigned same to employes not covered under the Agreement.

2) Carrier shall now be required to compensate employe K. J. Kwasnik four (4) hours at the staight time rate of Track Timekeeper Position 00220 for each of the following dates:

June 19, 22, 23, 24, 25, 26, 29, 30, 1981
July 1, 2, 3, 6, 7, 8, 9, 10, 13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 27, 28, 29, 30, 31, 1981
August 3, 4, 5, 6, 7, 10, 11, 12, 13, 14, 18, 19, 20, 21, 24, 25, 26, 27, 28, 31, 1981
September 1, 2, 3, 4, 8, 9, 10, 11, 14, 15, 16, 17, 18, 21, 22, 23, 24, 25, 28, 29, 30
October 1, 2, 5, 6, 7, 8, 9, 12, 13, 14, 1981

and for all subsequent dates that the violation continues.

OPINION OF BOARD: At the time this dispute arose, Claimant K. J. Kwasnik, was regularly assigned as a Track Timekeeper in Carrier's Seniority District No. 3. His assigned hours were 7:00 a.m. to 3:30 p.m. with rest days of Saturday and Sunday.

On May 29, 1981, General Foreman J. Alberts informed Claimant he would no longer be given the duty of supervising the payroll for the two suburban section gangs then in operation.

The Organization filed a claim protesting the removal of this duty from Claimant and assigning it to employes not covered by the Agreement. Carrier timely denied the claim. Thereafter, it was handled in the usual manner on the property. It is now before this Board for adjudication.,

The Organization contends that Carrier's action violates Rule 1 and Rule 57 of the Agreement. Those Rules read, in relevant part:

"RULE 1 - SCOPE

"...positions within the scope of this agreement belong to the employes covered thereby and nothing in this agreement shall be construed to permit the removal of positions from the application of these rules, except in the manner provided in Rule 57."

"RULE 57 - DATE EFFECTIVE AND CHANGES

"This agreement shall be effective as of July 1, 1975 and shall supersede and be substituted for all rules or existing agreements. practices and working conditions (except those not in conflict with this agreement) and shall remain in full force and effect until it is changed as provided for in the Railway Labor Act as amended.'

The Organization asserts that Claimant has exclusively performed the duties in dispute since he assumed the position of Track Timekeeper. In the Organization's view, such exclusivity requires that the work in question be performed only by its members. Here, however. the Organization points out that this work has been assigned to employes outside its Craft. Thus, the Organization reasons that this assignment clearly violates the Scope Rule. Accordingly, and for these reasons, it asks that the claim be sustained.

Carrier, on the other hand, insists that Section Gang Timekeeping has never been exclusively assigned to those employes covered under this Scope Rule. Therefore, it contends, it was free to assign such work to members of another Craft. Accordingly, it asks that the claim be denied.

A review of the record evidence convinces us that the claim must fail. This is so for a number of reasons. First, it is clear that numerous employes not covered under this Agreement have engaged in Section Gang Timekeeping. That is, Section Gang Foreman and Assistant Foremen have repeatedly performed this work. As such, it has not been exclusively assigned to members of the Organization's Craft.

Second, this finding is supported by the Awards cited by the parties. For example, those Awards relied on by the Organization establish that the disputed work was performed exclusively by members of the Craft involved. Here, however, the Organization has only demonstrated that the Claimant has engaged in these duties. Thus, the Organization has not proven that the work in question was performed solely by its members.

By contrast. this Board's Award No. 25077, cited by Carrier, is relevant to this dispute. It concludes that, "It is an established precedent that the burden of proving a claim according to the National Railroad Adjustment Board lies with the moving party". Here, the moving party simply has not met its burden of establishing exclusivity as to the disputed work. Accordingly, and for these reasons, the claim must be denied.

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

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 23rd day of May 1985.