

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25576  
Docket Number a-25318

Edward L. **Suntrup**, Referee

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

PARTIES TO DISPUTE: (

(**Elgin**, Joliet and Eastern Railway Company

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood  
(**GL-9835**) that:

1. Carrier violated the effective **Clerks'** Agreement when, on or about **October 20, 1982**, it transferred work performed in the **Gary, Indiana Storehouse (Seniority District #4)** to Joliet, Illinois (Seniority District #3);

2. Carrier shall now compensate Chief Clerk Charles Harding and/or his successor or successors in interest; namely, any other **employee or employees** who have stood in the status as claimant as incumbent of **Position SK-108** three (3) hours' pay at the pro rata rate of Position SK-108 in addition to pay already received, for October 20, 1982, and for each and every day thereafter that a Like violation occurs.

OPINION OF BOARD: On November 26, 1982, a pay claim was filed by the Organization on **behalf** of Chief Clerk C. Harding or his successor or successors in interest. The claim alleged that the Carrier began to remove work from the Gary (**Ind.**) Store Department on **October 20, 1982** and transferred it to the Joliet (**Ill.**) Store Department. The alleged transfer of work was ~~from~~ Seniority District lib. 4 to Seniority District No. 3. It is the contention of the Organization that **all** requisitions for material for all departments in Gary, Gary Mill Yard, South Chicago and Whiting "must go through the Gary Store **Department**" and that the typing of purchase orders for the requisitions must remain with the Chief Clerk. SK-108 at the Gary Store Department absent application of **the** provisions of **Rule 5** of the current Agreement. Although there is **no** evidence in the record that the **Chief Clerk**, SK-108 lost work over the alleged transfer of work, the claim requests three (3) hours' damages for this incumbent and/or his successors for each work day that the alleged transfer continues in contravention of **Rule 5** of the Agreement.

The position of the Carrier is that "...**records** will **show** (that) this **work** has historically been performed by Seniority District No. 1 personnel..." as well as "...**by** those located in Joliet, Illinois" in addition to those Located in Gary. The Carrier provided ten (10) copies of purchase orders to the Organization on the property with respect to this case to substantiate its claim that the type of work in question had been performed, prior to the filing of the claim, by **employees working** at Joliet. These Exhibits do not show that purchase orders **were typed** up for Whiting or South Chicago, but they do show purchase orders dated variously in 1982, but prior to October 20, 1982, **which** were typed up on materials to be shipped to **Gary** by Clerks located at Joliet.

A review of the record fails to produce an Organization response to the position of the Carrier that personnel in other Seniority Districts, including District No. 3, performed the same type of **work** at bar. As the moving party, the burden of proof for the instant claim rests with the Organization to prove, by substantial evidence, to the contrary (Third Division Awards-22292, 22760, 22180). Further, this Board upholds the precedent, applicable herein, that unchallenged assertions on the property cannot be considered as fact (Third Division Awards 20283, 23478, 24059). There is insufficient substantial evidence of record to warrant the conclusion that the work in question was not already performed in the Seniority District, prior to the filing of the claim, to which it was allegedly transferred.

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 **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

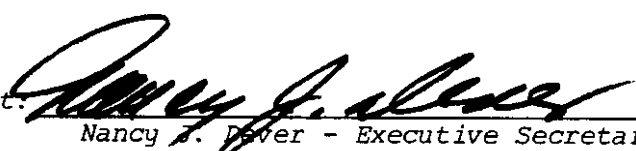
That the **Agreement** was not violated,

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 26th day of July 1985.

