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NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25946  
Docket Number CL-24928

George V. Boyle, 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 that:

1. Carrier violated the effective Clerks' Agreement on August 12, 21, 24, 26, September 4 and November 18, 1981, when it required Chief Interchange Clerk W. Bellinger to suspend the duties of his position to perform outside yard checking - - work not in character with that which he normally performs;

2. Carrier shall now compensate Mr. Bellinger for eight (8) hours' pay at the pro rata rate of Position GT-58 for each of the above referred to dates."

OPINION OF BOARD: The Claimant is a Chief Interchange Clerk who normally works indoors in an office. On a series of dates in August, September and November of 1981 he was called upon to perform outside yard checking. This, the Organization claims is a violation of Rule 4 of the Safety Rules relating to requirements for proper apparel to be worn performing such duties.

It asserts further that a prior Award, No. 22906, which sustained a claim on the same issue is in the nature of stare decisis.

It cites "Rule 9. Bulletins" to show that the "title and description of position" must show such duties for the Claimant's position if he is to be required to perform them.

Further it refers to a "Note 2" appended to "Rule 45. Absorbing Overtime" which reads:

"It is mutually understood and agreed an employee will not be required to render assistance in the performance of work which might be considered hazardous or demeaning to that employee, or which might require clothing which that employee does not ordinarily wear, and in addition to one or more of the foregoing characteristics which would be foreign to the work which that employee ordinarily performs. . . ."

The Carrier asserts that this case is "resurrecting a claim previously handled", (Award No. 21588) and dismissed in 1977.

Further the Carrier points out that the disputed assignment resulted from prior abolition of positions "due to declines in Carrier's business throughout the year." As a result of which duties were reassigned and redistributed. This occurred in 1974 and subsequent holders of the Claimant's position performed the disputed duties without complaint. This assertion is unrefuted by the Organization.

Moreover, the Organization failed to show that these duties were, of their nature, hazardous, demeaning or foreign to the work which the Claimant ordinarily performs. The mere assertion is not proof for which the Organization must bear the burden.

Finally the Carrier insists that the Claim is barred by the doctrine of laches. On November 24, 1974 the Carrier issued a letter indicating that, in the future, such duties would be absorbed by all Yard Office Employees and that even such employees as Key punch Clerks would be required to assist in that work. The first Claim relative to this matter was initiated in 1979. Having "slept on its rights" for five (5) years, the Employees are barred from instituting a challenge to the legitimacy of the assignment.

The Board is forced to concur with the Carrier's position and without passing on the merits of the Claim finds that it is barred.

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

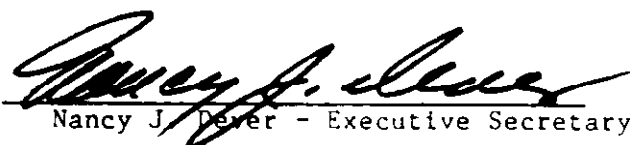
That the claim is barred.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 14th day of March 1986.