

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26040
Docket Number CL-26111

Philip Harris, Referee

PARTIES TO DISPUTE:

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
(
(Missouri Pacific Railroad Company

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood
(GL-9949) that:

1. Carrier violated the Agreement between the parties at Independence, Missouri when without an Agreement, it arbitrarily abolished the position of P. L. Trigg and then required or permitted Clerks Moulder and Zibung from Kansas City, Missouri, to perform some of the duties of Mr. Trigg at Independence, Missouri, beginning November 3, 1982.

2. Carrier shall now be required to compensate Mr. Trigg for eight (8) hours pay each day beginning November 3, 1982, and continuing each workday thereafter, in addition to any other compensation until violation is corrected."

OPINION OF BOARD: The Carrier abolished Claimant's position of Star Agent in Seniority District No. 22 at Independence, Missouri. On November 3, 1982, the Carrier began sending in a Clerk from Seniority District No. 19, Kansas City, Missouri, to perform the remaining work on an as-needed basis. The work consisted of inspecting shipments and preparing Over-Short Damage Reports (OS&D) Inspections. The site of this work was on the premises of the two major customers of the Carrier. Both of them arranged for office space for the Clerk traveling in from Kansas City.

The Organization states that the work has always been done by a Seniority District No. 22 Clerk, and that the Agreement was violated by the Carrier's assigning the tasks to a foreign Seniority District. Rule 5, Seniority District and Rosters, states, "Seniority rights of employee shall extend over the districts as established as of the date of this agreement and shall not be subject to change except by mutual agreement by the parties to this agreement". No such mutual agreement was sought by the Carrier.

The Carrier claims that the alleged violation of work transfer should be heard by another forum provided in the contract. However, if the merits of the grievance are reached, then the Organization has not proven that only Roster 22 employees have done the work. Should a violation be found, then there are, but few instances where this occurred.

The Board finds that the Agreement was violated. Rule 5 is quite clear in establishing seniority by specific districts. Though the Carrier has the explicit right to transfer work and/or employees within the system, the work per se remained fixed within Roster 22. Hence the dispute is properly before this Board.

There is a difference in testimony as to the exclusive purview held by the Organization over the tasks to be performed. One problem encountered by the Carrier is its introduction of de novo testimony before this tribunal which is inadmissible. But, what is quite clear is the unambiguous delineations of the geographical boundaries contained in Rule 5, and the requirement to mutually concur on changes to it. Finding otherwise would erode the integrity of the language in the Rule. Concerning the monetary aspects, this Award is directed only to the actual time spent by a Roster 19 employee, and not 8 hours daily since November 3, 1982, which is to be resolved by a mutual check of Carrier records.

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 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. Dever - Executive Secretary

Dated at Chicago, Illinois, this 11th day of June 1986.