

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26712  
Docket Number CL-26565

Edward L. Suntrup, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,  
( Freight Handlers, Express and Station Employees  
(  
(The Belt Railway Company of Chicago

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood  
(GL-10024) that:

1. Carrier violated the effective Clerks' Agreement when on June 11, 13, 14 and 15, 1985, (sic) it required and/or permitted an employee not covered thereby to perform the duties of the General Bookkeeper, a position covered by such Agreement;

2. Carrier shall now compensate Mr. E. D. Pollard for the difference between the rate of pay of his position and that of General Bookkeeper for each of the dates set forth above; and shall further compensate the senior furloughed employee eight (8) hours' pay at the straight time rate of Mr. Pollard's position for each of the dates claimed above."

OPINION OF BOARD: On August 8, 1984, a pay Claim was filed on behalf of the Claimant by the Organization for the dates of "...July 11 through 15, 1984." The Claim was filed with the Carrier's Manager of Disbursement and General Accounting. The Claim stated that this manager was "...observed on several days.... preparing detail work on Journal Entry 7 (payroll distribution) and Journal Entry 8 (Railroad Retirement Tax)." This Claim filed by the Organization was based on information provided to it by the Claimant. The Claim further stated that "...during the week beginning June 11, 1984, the General Bookkeeper, Mr. John DeHerrera was on vacation." The Claim was subsequently denied by the Carrier and progressed by the Organization in the normal manner prior to its docketing before the Third Division of the National Railroad Adjustment Board.

A close study of the record of this case warrants the conclusion that the Board must have considerable reservations about the truthfulness of the Claimant in this case. The record shows that the General Bookkeeper was not on vacation for a full week starting June 11, 1984, but was off sick on June 11, 1984, worked on June 12, 1984, and then was on vacation from June 13 through 15, 1984. Thus it is unclear how the Claimant could have observed the Manager making entries on June 12, 1984. The Bookkeeper himself was working on that day. More damaging to the credibility of the Claimant, however, is an entry in the record before the Board under date of June 5, 1985, which was written by the Claimant some ten months after the Claim was originally filed. This memo to the Claimant's General Chairman states:

"This is to certify that I observed Mr. H. Shepherd, Manager(of) Disbursement and General Accounting working Journal Entry #7 (Payroll Distribution) and Journal Entry #8 (Railroad Retirement Tax) on June 11, 13, 14 & 15 1984 in excess of five (5) hours per day, while Mr. J. DeHerrera, Head Bookkeeper was off sick and on vacation. The Carrier's records of Journal Entry #7 and #8 will verify this Claim." (Emphasis added)

First of all, the change in the substance of the Claim stems from the apparent fact that his own union Representative told the Claimant that he could not have observed the Manager on June 12, 1984, since the Bookkeeper was at work on that day. Secondly, the Claimant provides no evidence beyond conjecture to show that the Manager had worked the alleged five hours per day on the days in question. As moving party, it is incumbent on the Claimant to this case to produce such information since he "...certified... that (he) observed..." the Manager working those hours on the days in question. Most disturbing to the Board, however, is information in the record to show that the Claimant himself was not even at work on June 11, 1984! So how could he have "...certified" that he observed anyone doing anything on that day at his place of employment? In his letter of September 13, 1984, the Carrier's Manager of Disbursement and General Accounting states the following:

"It is also noted here for the record that Clerk E. Pollard had absented himself from working on June 11 and, therefore, was not available for any work assignment on June 11."

This is never denied by the Claimant and is supported by payroll information in the record.

The Statement of Claim before the Board states that alleged Agreement violations were committed by the Carrier in June of 1985, rather than 1984. The Board must conclude that this is a clerical error and it will be treated as such.

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.

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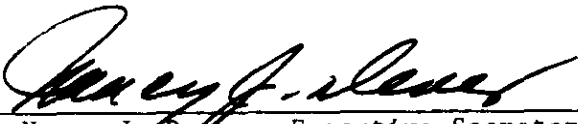
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Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 23rd day of November 1987.