

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 26938
Docket No. CL-26752
88-3-85-3-506

The Third Division consisted of the regular members and in addition Referee Eckehard Muessig when award was rendered.

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

PARTIES TO DISPUTE:

(The Atchison, Topeka and Santa Fe Railway Company

STATEMENT OF CLAIM: "Claim of the **System** Committee of the Brotherhood (GL-10033) that:

(a) Carrier violated the Agreement at Kansas City, Kansas, on March 20, 1984, when it permitted and/or required outside contractors not subject to the current Clerks' Agreement to perform routine clerical work, and

(b) D. V. Daniels, S. J. Hancock, and S. A. DeLeon shall now be compensated eight (8) hours at the pro rata rate of Stower for March 20, 1984, in addition to any other compensation received for this date."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the **employe** or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute **waived** right of appearance at hearing thereon.

The Claimants, at the time of this claim, were in an "**off-in-force**-reduction" status. The claim before the Board **arose** when, on March 20, 1984, an outside contractor made a load adjustment on one of the Carrier's cars. The Organization asserts that the work involved is schedule clerical work which was improperly removed from the scope and operation of the Agreement.

While there was an extensive exchange of correspondence between the parties on the property concerning this matter, the Board gives controlling weight to the substance of the Carrier's letter of September 14, 1984, to the organization. That letter again denied the claim at issue on the basis of "the same reasons set forth in [the] letter dated September 14, 1984, **involving** Claimant **Scarlett**, and for the reasons advanced by Superintendent Smith

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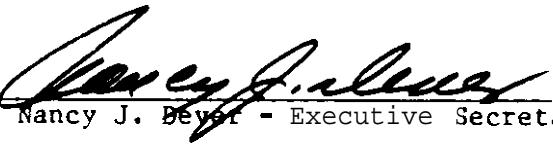
which are hereby affirmed." The lengthy denial of Claimant **Scarlett's** claim rested mainly on the assertion that the shippers of merchandise for many years have had the right and have, in fact, exercised this right to designate who will transfer their merchandise from a bad order car to another car. The Carrier contends, in effect, that the work involved was not for its benefit, was not at its expense, and was not under its direction. It also maintained in that letter that employees of other crafts have performed work such as at issue here (transferring loads) on the property for years.

It is well-established that material statements or assertions not denied or challenged on the property are accepted as fact. We find that such a situation is presented by this case and the claim is denied on that basis.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:: 
Nancy J. Beyer - Executive Secretary

Dated at Chicago, Illinois, this 30th day of March 1988.