

The Third Division consisted of the regular members and in addition Referee Rodney E. Dennis when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union
(Elgin, Joliet and Eastern Railway Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood
(GL-10028) that:

1. Carrier violated the effective Clerks' Agreement when, on August 19, 1984, it required and/or permitted employees not covered by such agreement to perform work reserved to employees covered thereby;

2. Carrier shall now compensate Clerk Stanley Galka for eight (8) hours' pay at the time and one-half rate of Position SK-14 for August 19, 1984."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees 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 were given due notice of hearing thereon.

As Third Party in Interest, Allied Services Division/BRAC was advised of the pendency of this dispute, but chose not to file a Submission with the Division.

A proposed Award in the instant case was issued in the Fall of 1987. This Award was on all fours with a case decided on August 24, 1987, by the Board in Third Division Award 26452. In that case, the Board sustained the Claim. The Board saw no reason, in spite of a Carrier Dissent in Award 26452, to do otherwise in this instance.

Between the time the proposed Award in the instant case was received by the Board and the Board met to adopt the Award, the Board adopted Third Division Award 26729, wherein it dismissed the Claim. There was an irreconcilable difference in the facts of the case and insufficient evidence was presented to Carrier to support the Organization's Claim.

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Award No. 27820
Docket No. CL-26484
89-3-85-3-473

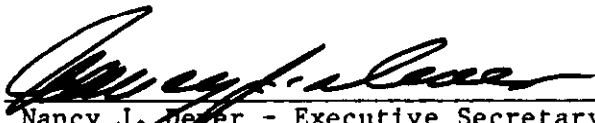
The Board heard reargument of the instant case. It has reviewed Third Division Award 26729 and concludes that the instant case is somewhat different in fact pattern from that Award as well as Third Division Award 26452.

We will therefore not apply Third Division Award 26729 in this instance and reassert our original Award and sustain the Claim.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: 
Nancy J. Defer - Executive Secretary

Dated at Chicago, Illinois, this 13th day of April 1989.

CARRIER MEMBERS' DISSENT
TO
AWARD 27820, DOCKET CL-26484
(Referee Dennis)

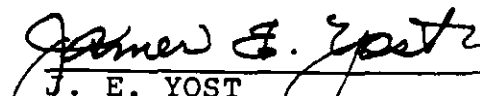
It is impossible to find fault with the rationale underlying the Majority decision - none is provided. All we are told is that this dispute is similar to the one which resulted in Third Division Award 26542 and dissimilar to the dispute which resulted in Third Division Award 26729. The Majority apparently forgot that not only were the parties the same in both disputes, but also, through an apparent mixup in presenting the second dispute to the Board, the exhibits and argument found in Award 26729 were identical to those found in Award 26542. There were no facts presented in either case which were not presented in the other. We thus are confronted with a Majority decision which agrees with two Awards that came to diametrically opposite conclusions on the same facts. The precedential effect of this Award is of somewhat dubious value.


M. W. FINGERHUT


R. L. HICKS


M. C. LESNIK


P. V. VARGA


J. E. YOST