

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 28092
Docket No. CL-27015
89-3-86-3-54

The Third Division consisted of the regular members and in addition Referee Martin F. Scheinman when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union
(The Atchison, Topeka and Santa Fe Railway Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood
(GL-10075) that:

(a) Carrier violated the provisions of the current Clerks' Agreement at Winslow, Arizona, on January 1, 1985, when it required and/or permitted an individual or Company that is not covered by the rules of the Agreement to perform routine schedule clerical work, and

(b) L. A. Raygor shall now be compensated for eight (8) hours' pay at the pro rata rate of Station Wagon Driver Position No. 6064 for January 1, 1985, in addition to any other compensation Claimant may have received for this day."

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.

Claimant who has a seniority date of May 25, 1969, is the regularly assigned occupant of Station Wagon Driver Position No. 6064 at Winslow, Arizona, assigned to work 3:45 P.M. to 11:45 P.M., Wednesday through Sunday with Monday and Tuesday as rest days. On Tuesday, January 1, 1985, Carrier contacted Winslow Taxi Service to transport train crews at Winslow. As a result of Carrier's action the Organization filed the instant Claim. It was denied by the Carrier and the appeal was handled in the usual manner on the property. It is now before this Board for adjudication.

The Organization contends that the Scope Rule specifically reserves the work in dispute to employees covered by the Agreement. It further argues that the work performed by Winslow Taxi Service on January 1, 1985, further violates Rule 32-E which establishes the order of precedence to be followed when calling employees for work on days not part of any regular assignment. That Rule states, in pertinent part:

"Where work is required by the Carrier to be performed on a day which is not a part of any assignment, it may be performed by the senior qualified and available off-in-force-reduction employee who will otherwise not have 40 hours of work that week, in all other cases by the regular employee."

The Organization insists that Carrier does not have the unilateral right to remove work from clerical positions and allow individuals not covered by the Agreement to perform that work. As such, it argues that Carrier's actions in permitting an employee of the Winslow Taxi Service to perform clerical work denied Claimant the right or opportunity to do so. Accordingly, it asks that the Claim be sustained.

Carrier, on the other hand, asserts that the work does not exclusively belong to the position of Station Wagon Driver. Instead, it insists that since the 1940's, taxicabs and private hauling contractors have been performing the work of transporting train crews at various locations on Carrier's system. Carrier maintains that the Scope Rule does not specifically detail or exclusively reserve particular work to any craft or class. As such, Carrier argues, the disputed work has been performed by clerical employees during their regularly assigned hours. It maintains that clerical employees were never used on rest days or outside their regularly assigned hours to perform such work at Winslow. Thus, it asks that the Claim be rejected.

The Board has carefully reviewed the record evidence and must support the arguments raised by Carrier. In its Submission before this Board, the Organization argues that Rule 32-E supports its position in this instant dispute. The application of that Rule, the Organization contends, would entitle Claimant to be called for work on his rest days. We note, however, that the record evidence reveals that the Organization failed to raise this issue on the property. That failure bars this Board from considering this argument. Had it been raised on the property, it might or might not have constituted valid rule support for its Claim. However, it cannot be considered here. Thus, we are compelled to deny the Organization's Claim.

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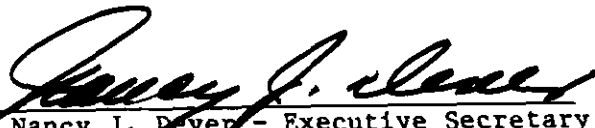
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A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 11th day of September 1989.