

The Third Division consisted of the regular members and in addition Referee Irwin M. Lieberman 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-10202) that:

(a) Carrier violated the provisions of the current Clerks' Agreement at Barstow, California, commencing on or about June 23, 1986, when it failed and/or refused to call V. Zamora, et al., to protect overtime, and

(b) Claimant Zamora and/or the employe(s) herein named shall now be compensated eight (8) hours' at the time and one-half rate of Claimant(s) regularly assigned position(s) in addition to any other compensation received as a result of such violation:

V. Zamora	F. Martinez	L. R. Sanchez
R. G. Bryan	J. R. Chavez	V. W. Griggs
B. Y. Roberts	P. Apodoca	J. L. Alvarez

(c) Proper compensation for the available Claimant(s) herein named to be determined by a joint check of the Carrier's payroll and other records."

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.

Position No. 6003 at the Superintendent of Shops Office in Barstow, California, was abolished on January 24, 1986, and the work of that position was to be distributed to the remaining clerical positions in that department. The job description of Position No. 6003 contains, in relevant part, the following:

"Filing and matching of correspondence and wires.
Handle destruction of records at direction of Assistant to Superintendent of Shops. Responsible for properly maintaining files...."

In the period between June 24, 1986, and August 23, 1986, Carrier called and utilized three off-in-force protected employees to perform the functions of sorting and packing files and records to be shipped from the Mechanical Superintendent's Office in Barstow to Topeka, Kansas, for storage. The performance of this work is at the heart of the dispute herein.

The Organization argues that the work in question was overflow work which should have accrued to the clerical employees who took over the functions of Position No. 6003. Thus the work should have been assigned to the available Claimants and they are entitled to pay at the overtime rate for all the hours assigned to the laid-off employees. It is urged further that the work was not due to any short vacancies on regularly assigned positions. The Organization asserts that Carrier violated Rules 14 and 32-G by its actions.

Carrier takes the position that the work in question was work on days not part of any assignment and therefore was properly assigned to the off-in-force employees in accordance with the provisions of Rule 32-E. In addition Carrier argues that the Claimants were not available on many of the dates that the work was performed. Furthermore, Carrier states that the penalty of time and one-half pay, if any is required, is clearly excessive for work not performed.


Under the Agreement, the Board finds, that the work of Position No. 6003 should have been assigned to the remaining clerical positions in the office. There is no evidence supplied by Carrier to the contrary, and therefore the presumption stands. Under the circumstances Carrier did indeed violate the Agreement by failing to assign the cleaning out of the old files to the remaining clerical employees in the department (the Claimants herein). However, it is evident that the Claimants were not available on all the dates involved and the number of hours and days are limited, as indicated in the record. Thus, in order to establish which employees are entitled to receive compensation for loss of work, a joint check of Carrier's records must be undertaken. In addition, the Board finds, contrary to the Organization's position, that the Claimants, when properly identified, are entitled to straight time pay only for time not worked.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 20th day of November 1989.