

The Third Division consisted of the regular members and in addition Referee George S. Roukis 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-10234) that:

CLAIM NO. 1:

(a) Carrier violated the rules of the current Clerks' Agreement at Barstow, California, on December 31, 1986 and January 1, 1987, when it required C. D. Garcia to take the holidays off and allowed another employe to perform his duties, and

(b) C. D. Garcia shall now be compensated for eight (8) hours' pay at time and one-half for Station Wagon Driver Position No. 6078 for December 31, 1986 and January 1, 1987, in addition to any other compensation Claimant received for these days as a result of such violation of Agreement rules, and

(c) Carrier shall now be required to pay 10% interest compounded daily until claim is paid.

CLAIM NO. 2:

(a) Carrier violated the rules of the current Clerks' Agreement at Barstow, California, on December 31, 1986 and January 1, 1987, when it required D. E. Hernandez to take the holidays off and allowed another employe to perform his duties, and

(b) D. E. Hernandez shall now be compensated for eight (8) hours' pay at time and one-half for Station Wagon Driver Position No. 6079 for December 31, 1986 and January 1, 1987, in addition to any other compensation Claimant received for these days as a result of such violation of Agreement rules, and

(c) Carrier shall now be required to pay 10% interest compounded daily until claim is paid.

CLAIM NO. 3:

(a) Carrier violated the rules of the current Clerks' Agreement at Barstow, California, on December 31, 1986 and January 1, 1987, when it required J. A. Valadez to take the holidays off and allowed another employe to perform his duties, and

(b) J. A. Valadez shall now be compensated for eight (8) hours' pay at time and one-half for Station Wagon Driver Position No. 6045 for December 31, 1986 and January 1, 1987, in addition to any other compensation Claimant received for these days as a result of such violation of Agreement rules, and

(c) Carrier shall now be required to pay 10% interest compounded daily until claim is paid."

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 central question in this dispute is whether Carrier violated Rule 32-G and the Note appended thereunder, when crew clerks, and car clerks were required to haul crews on December 31, 1986, and January 1, 1987. In essence, Claimants were required to observe the above days as holidays and their positions were accordingly blanked.

It was the Organization's position that since Claimants were regularly assigned to normally perform this work each day during their regular assigned hours, Carrier violated the Controlling Agreement. It cited several Third Division Awards to substantiate its interpretative position that Claimants' positions were not really blanked, since other employees performed their work. (See Third Division Awards 8653, 8563 and 7255).

In rebuttal, Carrier argued that Rule 27 granted it the right to blank a position on a holiday, since the Rule provides that an employee's work-week may be reduced one day when a designated holiday falls on one of the employee's assigned work days. It also asserted that the car clerks did not perform any duties exclusively assigned to Claimants as evidenced by the position bulletins which delineated the respective duties of Station Wagon Drivers and Car Clerks. It maintained that since the work required was not exclusively assigned to Claimants, it was not estopped from having other employees perform it. It cited several Awards as controlling authority. See Third Division Award 18115, Award No. 3 of Public Law Board No. 843, and Award No. 12 of Public Law Board No. 17.

In considering this case, the Board finds that Rule 32-G and append-
ing Note were violated when car clerks were used to haul crews on the cited
dates. We agree with the general principle enunciated in Third Division Award
18115, that where work is not exclusively performed by the incumbents of
blanked position, said work may be performed by other employees. However, in
the instant case, there is no clear record evidence that Claimants did not
routinely perform this work each day during their regularly assigned hours and
no evidence that other employees performed this work. Had their positions not
been blanked, they would have performed this work. In other words, other than
the position bulletins attached to Carrier's Submission, which comes too late
to be considered by the Board, we find no evidence that car clerks performed
this work. Statements from car clerks, supervisors and operating crew employ-
ees attesting that car clerks performed this work would have bolstered Car-
rier's affirmative defense.

As to the compensatory remedy, we concur with the holding in Third
Division Award 10166 that Claimants are entitled to straight-time compensation
for the time they were not used and, as such, the Claim for this amount is
sustained. We find no basis for awarding interest payment.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dover - Executive Secretary

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