

The Third Division consisted of the regular members and in addition Referee Eckehard Muessig 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-10330) that:

CLAIM NO. 1:

1. Carrier violated the provisions of the current Clerks' Agreement at Albuquerque, New Mexico, on November 2, 5, 6, 7, and 21, 1987, when it required and/or permitted an outside janitorial firm (Servicemaster) to perform routine clerical (janitorial) work, and

2. D. K. Avila shall now be compensated for eight (8) hours' pay each day for the above dates, in addition to any other compensation Claimant may have received for these days.

CASE NO. 2:

1. Carrier violated the rules of the current Clerks' Agreement at Albuquerque, New Mexico, on November 2, 5, 7, and 21, 1987, when it required and/or permitted an outside janitorial firm (Servicemaster) to perform routine clerical (janitorial) work and

2. L. B. McKenzie shall now be compensated for eight (8) hours' pay each day for the above dates, in addition to any other compensation Claimant may have received for these days.

CASE NO. 3:

1. Carrier violated the rules of the current Clerks' Agreement at Albuquerque, New Mexico, on November 2, 5, 7, and 21, 1987, when it required and/or permitted an outside janitorial firm (Servicemaster) to perform routine clerical (janitorial) work and

2. J. C. Kitts shall now be compensated for eight (8) hours' pay each day for the above dates, in addition to any other compensation Claimant may have received for these days."

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 waived right of appearance at hearing thereon.

There are three Claims involving the same disputed work performed by an outside janitorial firm on five days in November 1987. At the outset, the Board notes that both parties have advanced to the Board arguments and evidence that was not exchanged on the property. Accordingly, these issues and arguments which were not presented on the property, will not be considered de novo by this Board. To do otherwise is contrary to the Railway Labor Act and would be in direct contradiction to a long line of decisions of the Board.

With respect to the three separate Claims, we note that the wording of the individual Claims and the following correspondence is the same for each. The Carrier, in its identically worded denial letters, substantively gave its reasons for rejecting the Claims. There is nothing in the record properly before us that refutes these material statements and assertions. It has been consistently held by the Board that when material statements are made by one party and not denied by the other party, so that the allegations stand un rebutted, the material statements are accepted as established fact. On that basis, we must deny these Claims.

A W A R D

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 19th day of July 1990.