

The Third Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

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

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood (GL-10347) that:

1. Carrier violated and continues to violate the intent and provisions of the current Clerks' Agreement at San Diego, California commencing January 29, 1988, when it failed and/or refused to correctly adjust the assigned hours of Head Claim Clerk (Car Clerk) Position No. 6214 to 7:30 a.m. to 3:30 p.m., and

2. J. L. Dolan shall now be compensated one and one-half (1-1/2) hours at the time and one-half rate from 3:30 p.m. to 5:00 p.m., for each day Monday through Friday commencing January 29, 1988 at the rate of \$108.10 per day, plus all general wage increases, until the violations are terminated and the hours for Position No. 6214 are corrected."

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.

In this dispute, the Organization contends that Carrier violated the controlling Agreement, particularly Rule 29, though other rules are cited as pertinent, when the Carrier failed and/or refused to adjust the assigned hours of Position No. 6214 Head Claim Clerk. By way of background, Position No. 6214 had been modified circa March, 1987, which included a change in title and an incremental increase in the compensatory rate. The hours of the position were also changed to 8:00 A.M. to 5:00 P.M. with a lunch period from 12 Noon to 1:00 P.M. On March 1, 1988, the Organization requested Carrier to reexamine the assignment and change the hours of Position No. 6214 to 7:30 A.M. to

3:30 P.M. It was its belief that because there were three shifts in the San Diego Yard Office which covered work of the same character for a 24 hour period, two of which, the afternoon and midnight shifts worked eight (8) continuous hours, Carrier was required as per Rule 29 to insure that such shifts reflected consecutive assignments. Under the arrangements at the San Diego Yard Office, the schedule of hours was structured as follows:

"Position No. 6214 - 8:00 A.M. - 5:00 P.M. Lunch 12 - 1 P.M.
Position No. 6210 - 3:30 P.M. - 11:30 P.M. Lunch 20 minutes
Position No. 6213 - 11:30 P.M. - 7:30 A.M. Lunch 20 minutes"

In response, Carrier points out that the three (3) positions do not cover a 24 hour period since there is no duty coverage between 7:30 A.M. to 8:00 A.M. and between 1:00 P.M. to 2:00 P.M. Further, these positions do not work around the clock, seven (7) days a week and the character of work among these positions is distinguishable. It maintains that Position No. 6214 performs claims inspecting and computer report closeouts, which are not performed by Position Nos. 6210 and 6213.,


In considering this case, we concur with Carrier's position. Firstly, there was no proof that the three positions worked during a full 24 hour period. Secondly, there was no indisputable evidence that Position No. 6214 performed work of the same character as the other positions. Carrier has demonstrated to the satisfaction of the Board that Position No. 6214 performed duties of a qualitatively different nature and this showing was not overcome or placed into reasonable doubt by the Organization's evidence. Since the Organization as the moving party has the responsibility to establish the bona fides of its Claim, we are not convinced by this record that it has met this evidentiary obligation. We find no violation of Rule 29 or other Rules.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Beyer - Executive Secretary

Dated at Chicago, Illinois, this 28th day of March 1991.