

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-10458) that:

(a) Carrier violated the current Clerks' Agreement at Barstow, California, on April 25, 1989, when it failed and/or refused to call B. O. Griego to protect the duties normally and customarily performed by him and the janitorial assignments, and

(b) B. O. Griego shall now be compensated for eight (8) hours' pay at the rate of Clerk/Janitor Position No. 6017 for April 25, 1989. In addition, Carrier shall pay all premiums on Claimant's Health Care Plan of the ATSF Employees' Benefit Association and the Health and Welfare under the Health and Welfare Plan of the Nation's Railroads and the Railway Labor Organization as required for the month as though service was performed on the date involved. Carrier shall also be required to calculate this date as a day of service in determining qualifying days for vacation and holiday pay purposes."

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 employees 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.

This is a claim for work performed on Tuesday, April 25, 1989, by two employees of the Laborer's craft. The specific work at issue is the sweeping of the lunch room and stocking a paper towel dispenser at the Diesel Shop in the Carrier's Barstow, California, facility.

We note that the Carrier, in its letter of September 7, 1989, to the Organization, clearly presented material matters that were neither disputed nor refuted on the property. Here, we particularly observe that a portion of the letter stated:

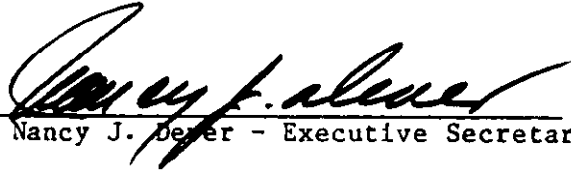
"The work performed by Bill Reed and Fermin Aragon of the Laborer's craft was not clerical work subject to the Clerk's Agreement. The work therein was janitor work in the shop which is normally performed by the Laborer's craft at Barstow. This same type of work is performed by other than clerical employees at San Bernardino and Cleburne. Therefore, clerical employees do not have exclusivity to performing this type of work."

Accordingly, we again follow the well-established principle that a material statement made by one party which is not challenged or rebutted stands as an established fact. This situation is found in this case and, therefore, the claim is denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: 
Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 28th day of February 1992.