

The Third Division consisted of the regular members and in addition Referee Edward L. Suntrup when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union
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(Chicago and Northwestern Transportation Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood
(GL-10534) that:

1. Carrier violated the effective Agreement when it failed to properly compensate Mr. V. E. Shelton for December 24, 1987, a holiday and a day on which he was on vacation and his position was required to be worked.

2. Carrier shall now compensate Mr. Shelton an additional eight (8) hours' pay at the time and one-half rate of his position Job #119, Industry Clerk, Short Line Yard, Des Moines, Iowa for December 24, 1987."

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.

On January 26, 1988, the Local Chairman at Boone, Iowa, filed a Claim on grounds that the Claimant's job was worked on December 24, 1987, while he was on vacation. When the Claimant had requested his regular vacation pay and an additional eight (8) hours at time and a half, the latter was rejected. He was paid at straight time for these eight (8) hours. At dispute in this case is whether the Claimant should have been paid at straight time, or at time and one-half, for the additional eight (8) hours.

On the claimed date the Claimant held Job #119 at Des Moines, Iowa. This position is variously titled, according to the Organization, which is not disputed by the Carrier, as Yard Clerk or Industry Clerk. According to the Organization this job is factually assigned specific functions in the yard office, with a specific desk. Requests are directed to Job #119 from the Carrier's customers "...to set and pull cars and to release cars for demurrage

purposes." According to the Organization, the other positions in the Des Moines' office entitled: "yard clerk" do not perform the types of functions which are associated with Job #119 nor are the incumbents of certain of the other Yard Clerk positions required to be familiar with the various codes and terms used in handling records associated with Job #119.

The contractual basis for the Claim, according to the Organization, is found in the National Vacation Agreement at Article (7)(a) which states, in pertinent part, the following:

"Allowances for each day for which an employee is entitled to a vacation with pay will be calculated on the following basis:

An employee having a regular assignment will be paid while on vacation the daily compensation paid by the Carrier for such assignment."

According to the Organization, Interpretation of the above language was agreed upon by the parties in sidebar letter dated June 10, 1942 to mean the following:

"(Article 7(a))...contemplates that an employee having a regular assignment will not be any better or worse off, while on vacation, as to the daily compensation paid by the carrier than if he had remained at work on such assignment, this not to include casual or unassigned overtime or amounts received from others than the employing carrier."

In denying the Claim the Carrier states that Job "#119 at Des Moines did not work on Christmas Eve holiday which fell on December 24, 1987." The Organization vigorously disputes this at various points in the record. Specific reference can be cited here to a letter dated August 25, 1988, by a Clerk at Des Moines to the General Chairman of the Organization in Chicago wherein the former both outlines the factual differences between the duties of Yard and Industry Clerks, and also avers that a clerk had stated to him that when he reported to work on Job #127 on December 24, 1987, (a Yard Clerk job) his duties that day also included those of Job #119. The case centers on the credibility of this letter, its Interpretation of the differences between positions such as Jobs #127 and #119, and whether Job #119 was, in fact, worked on the day in question. The Carrier does not dispute that this internal letter between members of the Organization forms part of the record during the handling of the Claim on property. The Carrier did dispute, during the Hearing of this case before the Board, the evidentiary appropriateness of an additional letter to the Local Chairman at Des Moines by the Clerk who was assigned to work Job #127 on December 24, 1987, but who wrote that he also worked Job #119 on that day. The Carrier's objection is based on arbitral precedent which holds that materials and arguments not exchanged between the parties during the handling of a Claim on property may not be brought before the Board in its deliberations on a case (See Third Division Awards 21463,

22054, 25575, 26257). The Board need not rule here however, on this issue since the letter between the Clerk and the General Chairman alone satisfies evidentiary requirements which are those of the Organization as moving party. The Board is sufficiently persuaded that Job #119 was worked on the date in question if not in whole at least in part.

With respect to the overlap between Jobs #127 and #119, the Carrier argues that the job bulletins for both imply that both Yard Clerks and Industry Clerks must be qualified to perform IDP work. The Organization factually disputes that such happens and in the August 25, 1988 memo it is stated that "...yard clerks are not required to know dmid and dmrg functions and do not know demurrage rules." Or to put it otherwise, the Organization argues, as a general matter on how Yard Clerk and Industry Clerk duties are apportioned at Des Moines: "...you can have a competent a yard clerk who knows nothing of industry work." But if such is so, argues the Carrier, how then could the Clerk in question, on December 24, 1987, have performed Industry Clerk duties since he had Yard Clerk assignment? The answer to that is that the Yard Clerk in question knew how to do Industry Clerk work in this instance because he had formerly been an Industry Clerk. Secondly, relative to the resolution of this Claim on basis of work actually performed by the various clerk positions at Des Moines, versus the generality of duties described in bulletins, the Carrier itself answers that question in its submission by referencing arbitral precedent. In Third Division 28226 the Board has stated:

"The Board finds that a bulletin advertising a job creates or establishes no legal obligations. It's purpose is informational rather than contractual-...".

On the record as a whole the Board must conclude that there is sufficient evidence of record in this case pointing to a past practice of clear work divisions, irrespective of information found in bulletins, between Yard Clerk and Industry Clerk positions at Des Moines such as Jobs #127 and #119, and that information provided by the Organization with respect to what happened on December 24, 1987, fulfills evidentiary requirements that the incumbent of Job #127 on that day did work Job #119. The position by the Carrier that Job #119 was annulled on the Christmas Eve holiday in 1987, is not factually correct. The Claim must be sustained.

The Agreement was violated.

A W A R D


Claim sustained.

Form 1
Page 4

Award No. 29328
Docket No. CL-29690
92-3-91-3-52

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 24th day of July 1992.