

The Third Division consisted of the regular members and in addition Referee Hugh G. Duffy when award was rendered.

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

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood
(GL-10599) that:

1. Carrier violated the effective agreement when it failed to fill a vacancy on Position #006, Clerk-Steno, while continuing to have the duties of said position performed by employees not covered thereby;
2. Carrier shall now compensate Chief Service Clerk R. A. Presutti and additional eight (8) hours' pay for each and every day, beginning sixty (60) days retroactive to October 26, 1987, and continuing thereafter for as long as a like violation occurs."

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.

This is a Scope Rule claim in which the Organization alleges that the Carrier removed work performed by members of the clerical craft and reassigned it to officers and other employees not covered by the Agreement.

As a preliminary matter, the Carrier contends that the claim should be denied on the grounds that no conference was held between the parties on the property, as required by Section 152, Second of the Railway Labor Act. The Organization in its Submission to the Board states that the required conference was held. Since there is nothing in the record developed on the property which would allow the Board to resolve this factual dispute, we accept the Organization's statement that the conference was held.

We find the Organization's argument persuasive that Third Division Award 29093 (McAllister), involving a similar issue between the parties, is directly on point and is controlling precedent in this matter. There the Board held:

"Based upon the record before the Board, we find the Scope Rule in this case to be a 'position and work' Rule, as argued by the Organization. As such, when work is added to a position, as was the case herein, it may not be removed from that position and transferred to an employee outside the scope of the Agreement without mutual concurrence. Our review of Rule 7(b) indicates the Claimant's position is exempt from the bulletin and placement rules. It says nothing about the type of work which may be performed by the incumbents of such positions. If the Carrier chooses to take advantage of the skills of the incumbent by having him perform duties otherwise performed by officers, it must recognize such additional duties will accrete to the position."

We thus find that the Carrier violated the Agreement when it reassigned the payroll function to the Office Manager. With respect to the question of monetary damages, Claimant was fully employed at all times and no showing was made that he suffered any loss of earnings. Accordingly, following numerous precedents of the Board, no monetary damages will be awarded.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Decker - Executive Secretary

Dated at Chicago, Illinois, this 7th day of December 1992

CARRIER MEMBERS' CONCURRENCE AND DISSENT
TO
AWARD 29463, DOCKET CL-29810
(Referee Duffy)

The last on-property correspondence provided this Board was the Carrier's February 24, 1988 letter denying the claim. The Organization filed Notice with this Board on May 21, 1991. In its Submission to this Board the Carrier pointed out:

"...the appropriate conference was not held as is required by the Railway Labor Act as amended, and of Circular No. 1 of the National Railroad Adjustment Board."

In view of the fact that the Organization had not sought a conference at any time between February 1988 and May 1991 and the Organization's certification in their Submission that all data had been submitted to the Carrier substantiates, by its absence, that no conference was sought or held. Such made the Organization's claim to this Board defective and it should have been dismissed without addressing the merits.

Third Division Award 28617

"The record of this case indicates that no conference relative to this Claim was held on the property prior to its submission to the Board. Accordingly, we have no alternative but to dismiss the Claim."

See also recent Third Division Awards 27912, 27816, 27586, 27482, 26867, 24628 and 24141.

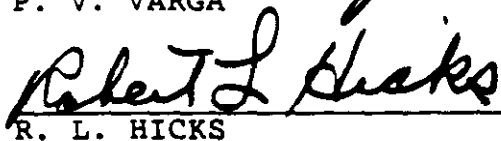
Concerning the preparation of the payroll, the record substantiates that such had been done by the Officer Manager; that only recently did Claimant do this; that when Claimant left the position this detail reverted back to the Office Manager and that this "function" took 30 minutes/mo. The record also substantiates

that this work never became regularly assigned to clerk's Position 008. Nevertheless, the Majority relies on the errant Award 29093 that such duties automatically "accrete to the position." Award 29093 was strongly dissented to both on procedural and substantive grounds and it is included herewith.

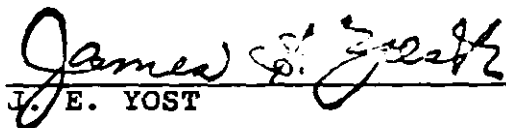
Preparing the payroll was NEVER a regularly assigned duty of Position 008. Even the errant process of accretion takes some time to effect its growth. The Organization asserted that such work including the payroll was being performed by officials on a daily basis. This decision rightly found that the clerical work continued to be performed by "the clerical craft" and the payroll comprised only .003% (160 hours divided by 30 minutes) of the time employed during the month. Further, absent a showing of loss, Claimant was not entitled to any compensation.


P. V. VARGA


M. W. FINGERHUT


R. L. HICKS


M. C. LESNIK


J. E. YOST