

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30450
Docket No. CL-29458
94-3-90-3-387

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

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

STATEMENT OF CLAIM:

- "(a) The Carrier violated the provisions of the current Clerk's Agreement at Silsbee, Texas, on August 3 and 4, 1988, when it required and/or permitted Jackie Fuller and/or other employees of Beaumont Court reporters, an outside firm that is not covered by the Rules of the Agreement, to perform routine schedule clerical work, and
- (b) Claimant J. M. Bateman shall now be compensated for eight (8) hours pro rata rate of former Position No. 6024, Steno to Trainmaster, Silsbee, Texas, (Rate of \$106.42 plus subsequent wage increases) on August 3, 1988, plus an additional eight (8) hours pro rata rate, for taking and transcription of notes, in addition to any other compensation Claimant may have received for these two days, and
- (c) Claimant J. M. Bateman shall also be compensated the highest rate of the two Positions No. 6024 and 6023, \$106.42 per day, for eight (8) hours actually worked on Position No. 6023 for August 3 and 4, 1988, in addition to any other compensation already received for these two 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 employee 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.

At the relevant time, Claimant held seniority on the Southern Division Station Department seniority roster and occupied the Steno Claim Clerk Position No. 6023 at Silsbee, Texas. On June 28, 1988, the parties entered into an Implementing Agreement to transfer 11 employees from the Southern Division Superintendent's Seniority District to the Northern Division Superintendent's Seniority District. The Carrier abolished 17 positions on the Southern Division because the duties performed by those jobs were being transferred to the Northern Division. Four positions remained in the Southern Division. Steno to Trainmaster, Position No. 6024 was not re-established on either district.

On August 3 and 4, 1988, the Carrier determined that it was necessary to take and transcribe notes from a formal Investigation at Silsbee. Rather than assigning the work to Claimant, the Carrier utilized the services of an outside court reporting service on those dates. According to the Carrier's December 1, 1988 declination letter, Claimant was asked if he could transcribe the Investigation and "[h]e declined the offer, stating that he was not familiar with formal Investigations and did not believe that his shorthand was good enough to take a formal." By statement dated June 19, 1989, Claimant specifically disputed the assertion that he declined the opportunity to take the Investigation stating "I was asked by Mr. Kennedy if I would take the Investigation serving as a stenographer. I told him that I would do my best, but that I had never taken an Investigation and it would take me longer to transcribe the Investigation than the regular incumbent stenographer F. M. Bell who had taken a buyout." Kennedy did not thereafter specifically dispute Claimant's assertion.

According to the Organization, the work of transcribing formal Investigations was formerly performed by Position No. 6024 and the Clerical forces at Silsbee have performed this work at Silsbee since its inception. According to the Carrier, however, court reporters have been used for many years to take and transcribe formal Investigations.

The parties have focused their arguments on whether the scope rule in this case is general thereby requiring a demonstration of system-wide exclusivity by the Organization to support a contention of an improper assignment. Under the circumstances presented, we need not address those arguments because this matter can be resolved on the basis of the facts presented. As set forth above, the Carrier generally asserted that Claimant declined to take the work. Therefore, it is apparent that irrespective of the ramifications of the nature of the scope rule arguments, the Carrier offered the work to Claimant which now effectively precludes the Carrier from arguing that it was not required to do so.

In rebuttal to the Carrier's general contention that Claimant declined to accept the work, the Organization tendered a specific statement from Claimant wherein Claimant effectively denies that he declined the work but asserts that all he stated was that "I would do my best." That specific factual assertion was not rebutted by the Carrier with an equally sufficient factual assertion as opposed to an allegation that Claimant declined the work. Based on the record evidence before us, we therefore find that Claimant did not refuse the assignment. We shall therefore sustain the claim on the grounds that this record shows that the Carrier offered the work to Claimant, Claimant accepted the work, but the Carrier did not thereafter permit Claimant to perform the work.

As a remedy Claimant shall be made whole for the loss of the work opportunity. Claimant's compensation shall be at Claimant's then rate of pay for the number of hours the Investigations took on the dates set forth in the claim plus a reasonable amount of time for transcription thereof. That pay shall be in addition to the hours worked by Claimant on those dates. Overtime, if any, shall be in accord with then prevailing overtime provisions of the Agreement.

AWARD

Claim sustained in accordance with the Findings.

O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 13th day of September 1994.