

Award No. 31583
Docket No. CL-32436
96-3-95-3-337

The Third Division consisted of the regular members and in addition Referee James E. Conway when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union
(National Railroad Passenger Corporation (AMTRAK))

STATEMENT OF CLAIM:

"Claim of the System Committee of the Organization (GL-11151) that:

The following claim is hereby presented to the Carrier on behalf of Claimant Jim Perkins.

- (a) The Carrier violated the Clerks' Rules Agreement, particularly Rules 1, 14 and other rules when it permitted and allowed Foreman III, Ray McKim to perform the duties of Material Control Clerk on March 5, 1994, at the Beech Grove Amtrak facility, specifically loading wheels, work which is performed specifically by TCU clerks Monday through Friday in the Material Control Department. This work was performed between the hours of 10:00 AM and 12:00 PM and failed to call and work Claimant to perform this work.**
- (b) That Claimant Jim Perkins now be allowed eight (8) hours pay at the punitive rate of \$13.54 per hour, for March 5, 1994, on account of this violation.**
- © Claimant is qualified, was available and should of been used to perform this work."**

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.

As Third Party in Interest, The American Railway and Airway Supervisors Association was advised of the pendency of this dispute, but did not file a Submission with the Board.

The relevant facts giving rise to this dispute are not complicated or hotly contested. On Saturday morning, March 5, 1994, a Carrier Foreman III represented by the ARASA was called in at Beech Grove, Indiana, to assist with the identification, marking and loading of some 12 locomotive wheel sets to be dispatched by truck to Chicago that day. Claimant, a Material Control Clerk on a regular day off and available for overtime, though not the senior available such employee, contends that he should have been called and offered that work on an overtime basis. The record reveals that approximately two hours were spent in completing the work in dispute.

The Organization's claim rests upon the Scope and Overtime provisions of the Agreement. It argues convincingly that the need to get the wheels loaded and transported was known in advance of March 5, thus negating any plausible claim of emergency on Carrier's part. Material Control Clerks routinely loaded wheels, according to the Organization, and, accordingly, the Overtime Rule obligated the Carrier to call in a Clerk on overtime on March 5. Specifically, Rule 14 OVERTIME provides in part:

"(e) If overtime is necessary in filling a short vacancy and the vacancy is on a rest day relief position, the regular occupants of the positions being relieved shall work the rest days of their own position if they so desire.... "

The Carrier's responses assert that the Scope Rule of the TCU contract is general in nature, and clearly does not allocate the work in dispute exclusively to TCU clerks. In support of that interpretation, it contends that employees in various crafts represented by several organizations have historically performed the task of loading wheels. It further urges that since no overtime was required, Rule 14 was not applicable. Lastly, the Carrier maintains that had overtime been required, the Claimant would not have been called in any event, since he was junior to another available Material Control Clerk at the facility.

This Board is fully sensitive to the corrosive effects on the bargaining unit of Carrier conduct that disregards Scope, Overtime and related rules prohibiting the reassignment of bargaining unit functions to uncovered personnel. In the view of this Board - a view that resonates in numerous Third Division Awards and requires no elaboration here - such violations call for a serious response and an effective remedy, because they represent an assault on the very core of the parties' compact. Simply put, if the integrity of collective bargaining is to be fostered, negotiated Rules must be enforced and penalties assessed for violations when established.

That said, however, the record in this matter does not support a finding in Claimant's favor.

The instant record is replete with the Organization's persistent argument that the loading of wheels belongs to Material Control Clerks. Indeed, the Carrier does not appear to vigorously deny that such employees routinely do that work. But the Claimant cites no Agreement provision that explicitly or impliedly confines the performance of that work to the Clerks' group. In contrast, the Carrier's record evidence here is persuasive in demonstrating that the loading of wheels historically has been done by numerous crafts throughout the Amtrak system, including Carmen, Machinists, Electricians, Laborers, and Foremen. Indeed, at the Beech Grove maintenance facility, the evidence suggests that members of the Firemen & Oilers craft have loaded and unloaded wheels and axles on a daily basis for over twenty-five years.

As has been articulated in numerous Awards of this Board, and including Public Law Board No. 2172, Award 1, it is the opinion of this Board that the petitioning Organization bears the burden in contested work cases of establishing exclusive reservation of work by the express terms of the Scope rule, construed when necessary by examining the system-wide custom, practice or tradition of the Parties. We are convinced that on the record here there has been no showing that the Scope rule on its face or past practice reserves wheel loading for performance exclusively by Material Control Clerks.

The Carrier has taken exception to certain "new evidence" it asserts was included in the Organization's brief for the first time, and not discussed on the property. For the reasons stated above, the Board finds it unnecessary to reach that issue in resolving this dispute.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 29th day of August 1996.