

**Award No. 14155**

**Docket No. CL-15314**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**Levi M. Hall, Referee**

**PARTIES TO DISPUTE:**

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,  
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES  
CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD  
COMPANY**

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood (GL 5699) that:

1. Clerks' Agreement was violated at Three Forks, Montana on March 20 and 31, 1964 when Carrier required or permitted Operators, employees covered by the Telegraphers' Agreement, to perform duties theretofore assigned to and performed on Boardman position covered by the Clerks' Agreement.

2. Carrier shall compensate Employee James F. Ranney for two (2) hours at the time and one-half rate of Boardman Position No. 7598 for March 20, 1964 and for one and one-half (1½) hours at the time and one-half rate of Boardman Position No. 7598 for March 31, 1964.

**EMPLOYEES' STATEMENT OF FACTS:** Employee James F. Ranney is the regularly assigned occupant of Boardman Position No. 7598 at Three Forks, Montana.

Position 7598 is a 5-day position which is assigned Monday through Friday, with Saturday and Sunday rest days. The Saturday and Sunday rest days are unassigned days. On those days, work in connection with the operation of the crew boards, consisting of making the daily board line up and as many of the daily reports as can be made out during the allotted time, is performed by the claimant on a call basis. The janitor work, yard check, 146 reports and unemployment reports are not performed on weekends.

The duties assigned to Boardman Position No. 7598 by bulletin are "Boardman work and reports, calling train and engine crews, yard check and 146 report, janitor work." The approximate time required to perform the duties of the Boardman position is as follows:

Daily board lineup office sheet		30 min.
Daily board reports	1 hr.	
Tab Board — black board		30 min.
Unemployment reports		30 "

**FOURTH DIVISION AWARD NO. 651**

"The Employes have failed to prove that the Carrier has violated any rule of the Agreement and have failed by proof to show that a substantial amount of work is being performed by employes outside the scope of the yardmasters' agreement. \* \* \*"

**FOURTH DIVISION AWARD NO. 746**

"\* \* \* The evidence in this docket is held to be insufficient to enable this Division to determine the merits of the claim asserted,"

**FOURTH DIVISION AWARD NO. 771**

"The burden of proof is on the claimant to prove his allegations."

**FOURTH DIVISION AWARD NO. 946**

"The burden of proof of violation of the agreement is on the Organization. Numerous Awards of the Fourth Division as well as other Divisions of the National Railroad Adjustment Board can be cited in support of this well established principle. \* \* \*"

**FOURTH DIVISION AWARD NO. 1208**

"\* \* \* If the facts clearly and conclusively support the Organization's contention, then we must allow the claim; if they lack specificity and are inconclusive, we must deny it. \* \* \* After a review of the entire record, we find that the evidence submitted by the Organization in behalf of the claim is not of sufficient substance to sustain the burden of proof required to justify an affirmative award."

**FOURTH DIVISION AWARD NO. 1469**

"\* \* \* The Petitioner has submitted no factual data in support of its claim that employes other than yardmasters are performing yardmasters' duties in violation of the controlling Agreement. This Division has repeatedly held that the burden is on the claimant to show by competent and substantial evidence that duties belonging to yardmasters are being performed by employes to sustain this burden and the claim will be denied."

It is the Carrier's position that the employes have failed to meet the burden of proof feature in the instant case in which the instant claim must be dismissed in its entirety.

The Carrier submits that it is readily apparent that by the claim which they have presented the employes are attempting to secure through the medium of a Board Award in the instant case something which they do not have under the rules and in this regard we would point out that it has been conclusively held that your Board is not empowered to write new rules or to write new provisions into existing rules.

It is the Carrier's position that there is absolutely no basis for the instant claim as it is in no way supported by past practice, schedule rules or agreements and we respectfully request, therefore, that the claim be denied.

**OPINION OF BOARD:** Claimant's position in the instant dispute is, as follows: "Although calling train and engine crews is a duty assigned to the Boardman position by bulletin, it is a practice of long standing for Operators to call train and engine crews during the hours when no clerical position and

employee is on duty." (Emphasis ours.) In addition, it is Claimant's contention that crews called by Operators at Three Forks, Montana are called from a list of crews prepared and furnished by the Boardman, the Claimant herein, — the operation of the crew boards remained the sole duty and responsibility of the Boardman; that on March 20 and March 31, 1961, when Claimant was not on duty, the need for additional crews arose which had not been anticipated and which therefore were not included in the lists of crews to be called as furnished to the Operators by the Boardman; that in such instance the Operators without the Boardman setting up the board called the crew; that the Claimant should have been contacted and called to set up crews as under the scope of the agreement this was the exclusive work of the Claimant as evidenced by the bulletin creating the assignment.

It is the position of the Carrier that all the work required in the conduct of the station at Three Forks had, for many years, been performed in whole or in part by fully covered employees within the scope of the Telegraphers' Agreement; that the work involved is neither reserved to employees within the scope of the Clerk's Agreement nor has it ever been exclusively performed by employees within the scope of the Clerks' Agreement. It is Carrier's position that there is absolutely no basis for the instant Claim.

It has been quite conclusively established by many Awards of this Board that the burden of proof of any claim rests with the party making the contention and claim. For Claimant to prevail in the instant claim it must have been established by a fair preponderance of the evidence that historically and traditionally by custom and practice on this property that an employee within the purview of the Clerks' Agreement had the exclusive right to the performance of setting up crew boards as contended for here.

See the following awards involving the same parties — Award 9757 — (LaDriere); Awards 14064, 14065 (Rohman).

Claimant has relied on mere assertions, not proof, and has failed to meet the burden of proof required.

**FINDINGS:** The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement has not been violated.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 11th day of February 1966.