



Award Number 17476

Docket Number CL-17944

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Robert C. McCandless, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP
CLERKS, FREIGHT HANDLERS, EXPRESS AND
STATION EMPLOYES**

**KENTUCKY AND INDIANA TERMINAL RAILROAD
COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6490) that:

- (a) Carrier violated the provision of the Clerks' Agreement when it refused to assign work properly coming under the Scope and other rules of the Clerical Agreement to the claimants in the I.B.M. Department at Louisville, Kentucky on the following dates: March 25 and 27, April 1, 2, 3, 9, 10 and 12, 1967.
- (b) Carrier shall now be required to compensate Messrs. J. E. Hartline, L. A. Duffy, C. R. Boyd, J. Canter, B. Renn, J. Stevens, R. Craven, D. House, R. Wagner, S. A. Hawkins and I. Devore a total of 260 hours at time and half rate (\$23.79 per day).

EMPLOYEES' STATEMENT OF FACTS: Early in 1967 the Carrier decided to have a cost study made. Three pages of instructions were compiled and issued to all switching crews. (Employees' Exhibit "A"). On March 15, 1967 more specific instructions were issued, again to yard conductors and as a representative example, see Employees' Exhibit "B". A new position was bulletined in the IBM department on February 24, 1967, to become effective March 13, 1967. Then on February 27, 1967 this same position was again advertised for bids. There were five bids on this position, however no assignment was ever made and on March 3, 1967, the employees were advised the position would not be established. See Employees' Exhibit "C", "D" and "E".

To enable the carrier to finish the cost study, the information had to be transferred from the yard conductors reports to I.B.M. cards. The original "Code" or "Switching Elements" numbering some 90 items were later reduced to seventy-seven items by the carrier.

Because of the time involved carrier stated it was necessary to utilize the services of non-scheduled employees of the carrier, as well as several employees of tenant lines owners of the terminal company. There is no doubt that agreement was violated, it is a question of how much.

The claim filed in behalf of the claimants was filed May 23, 1967, and, was declined, a timely appeal to the Carrier's highest officer, designated to

Under date of April 11, 1968, the General Chairman again requested conference on this matter (CX-13). Carrier replied to this letter on April 16, 1968, agreeing to further conference (CX-14).

Conference was held on May 21, 1968, during which records showing 1,345 hours overtime worked by Union employees in IBM office were presented to Organization, thereby supporting in detail Carrier's earlier refutation of the charges made in original claim.

Subsequent to this conference, on June 22, 1968, the General Chairman again addressed a letter to the Assistant Vice President, Labor Relations, stating claim was revised to delete entire time claimed against one excepted employee (eight hours) and four hours against another person who "was away from the property on a date" previously claimed (CX-15).

Under date of July 12, 1968, the Executive Secretary of the Third Division advised this action was instituted by the Union, and Carrier's reply was to be filed by August 12, 1968.

(Exhibits not reproduced)

OPINION OF BOARD: Employees advance the instant claim in behalf of eleven (11) claimants for time and a half for work which is alleged that they should have been allowed to perform.

A careful review of the record supports the Carrier's position that Employees altered its claim as to claimants and amounts claimed several times on the property, as well as in its submission to this Board. The burden of proof is on Employees to specifically identify the claimants and to substantiate by a preponderance of the evidence that they are entitled to the exact sums they claim. It is not necessary to look to the merits of the claim in this instance because the claimants here have failed in this burden, and consequently this claim must be denied.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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, 1923;

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

That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of September 1969.

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