

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19220
Docket Number CL-18040

Gene T. Ritter, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
PARTIES TO DISPUTE: (
(Erie Lackawanna Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6501)
that:

1. Carrier violated the rules of the Clerks' Agreement when it failed to utilize the services of a qualified, available employee covered by the Clerks' Agreement, to perform duties on position of Yard Clerk, Niagara Falls, New York, on the holiday, December 26, 1966, 8:30 a.m. to 5:00 p.m., in the absence of the regular incumbent who was on vacation. Carrier required an Operator-Clerk, an employee not covered by the Clerks' Agreement, to perform the duties thereof.

2. Carrier shall now be required to compensate Employee Lynn Hammond, one day's pay at time and one-half the rate of the Yard Clerk's position for the holiday, December 26, 1966, in addition to eight (8) hours pro rata pay he received as holiday pay. (Claim 1873)

OPINION OF BOARD: The regular incumbent of the Yard Clerk position at Niagara Falls, New York, was on vacation December 26, 1966, through December 30, 1966. This position was filled on a day to day basis by utilizing services of available employees on their rest days, except on Monday, December 26, 1966, the claim date, which Carrier alleges that such date was blanked. The record discloses that on December 26, 1966, Carrier permitted an Operator-Clerk, an employee not covered by the Clerks' Agreement, to book two (2) trains and to handle an interchange report. The Organization contends that the involved work constituted work exclusively reserved to Clerical employees, and that under Rule 20-3(f) - The Work On Unassigned Days Rule, Carrier was obligated to utilize the services of Claimant, who was available to perform such work on the claim date. Carrier takes the position that the Scope Rule of the Clerks' Agreement does not define the work to be performed, and, therefore, does not grant Clerks the exclusive right to perform all Clerical work; and that the Organization has failed to prove that the involved work belongs exclusively to employees under the Clerks' Agreement because of custom, practice and tradition on a system-wide basis. Carrier states that to the contrary, Telegraphers have also customarily performed the involved work, as has also been performed by Clerks.

Under authority of Awards 12957 (Wolfe), 18245 (Dugan), 18856 (Cull), and 19039 by this Referee, it is not necessary that the Organization prove exclusivity of the involved work when "The Work On Unassigned Days Rule" is the subject of interpretation. Therefore, the question, or questions, to be resolved in this issue are as follows:

1. Is the involved work normally performed by Claimant on his regular assignment?
2. Is the involved work normally performed by both Claimant and Operator-Clerk on their regular assignment?

The record conclusively shows that Claimant normally performed the involved work during his regularly assigned work week. The record also discloses that Operator-Clerks also performed the involved work incidental to their other duties during their regularly assigned work week. (Carrier's Exhibits "C", "D", and "E".) Also, Carrier has the right to blank a position, either in whole or in part, on a holiday. See Awards Nos. 7294, 8872, 10499, 10625 and 10819.

It appears from the record in this dispute on this property that both Clerks and Operator-Clerks normally perform the involved work during their regular work week assignments. Carrier, having the right to blank a position on a holiday, does not have the mandatory duty to recall Claimant in this instance when there are other employees on duty who normally performed the disputed work. This claim will 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, 1934;

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:

E.A. Killen
Executive Secretary

Dated at Chicago, Illinois, this 25th day of May 1972.