

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19255
Docket Number CL-15924

Clement P. Cull, Referee

(Brotherhood of Railway and Steamship Clerks,
(Freight Handlers, Express and Station Employees

PARTIES TO DISPUTE: (

(Chicago, Milwaukee, St. Paul and Pacific Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5869)
that:

1. Carrier violated the Clerks' Agreement at Sioux City, Iowa, when it required or permitted J. V. Lafferty to perform clerical work, which is not incidental to his position of Yardmaster.

2. Carrier shall be required to compensate employe B. C. Bell for one (1) hour at the overtime rate of Yard Clerk Position No. 6471 for each of the following days:

August 24, 25, 26, 27, 28 and 31;
September 1, 2, 3 and 4, 1964

3. The provisions of Article V of the Agreement of August 21, 1954 were violated when the Superintendent failed to decline that portion of the claim submitted to him in the first instance by employe B. C. Bell reading "and all following dates until the violation is corrected."

4. Carrier shall be required to allow the claim as presented for "all following dates until the violation is corrected."

OPINION OF BOARD: It is undisputed that beginning August 24, 1964, Yardmaster Lafferty began performing the work of preparing Form 1003 and Engine Comparison reports at Sioux City, Iowa which work at that location had been done for some time prior thereto by Claimant Bell.

Aside from relying on Rule 1, its Scope Rule, particularly (e) thereof, Rule 32 - Overtime and Rule 57, the Organization raises procedural questions. It contends (1) that the claim was not properly disallowed under Section 1(a) of Article V of the Agreement of August 21, 1954 and therefore should be sustained as presented and (2) the question of exclusivity was not timely raised by Carrier. Carrier contends that the assignment was proper as the work had not been reserved exclusively to Employees. It contends that the dates of August 24 and 26 in Item 2 of the claim are not properly before the Board and that Items 3 and 4 were not part of the claim during handling on the property and also are not properly before the Board.

The procedural questions raised require resolution before we may consider the merits of the claim.

Petitioner's contention that the disallowance of the Claim was not proper under the Agreement of August 21, 1954 is based on the letter of November 3, 1964 in which the Superintendent denied the Claim. The letter reads as follows:

"Dear Mr. Bell:

Referring to your letter of September 30th, enclosing 10 time claims for 1 hour at overtime rate during various dates commencing with August 24, 1964 up to and including September 4, 1964, account alleged violation of Clerks' Schedule due to Yardmaster removing regularly assigned work from your position.

As the presently assigned hours of your position do not coincide with the requirements of making a report of switch engines and overtime, we do not agree that making of these reports by the Yardmaster is a violation of the Clerks' Schedule and your claims are respectfully declined and Forms 2649-A are returned herewith."

The letter was in answer to a claim filed with the Superintendent by Claimant Bell on September 30, 1964 which reads as follows:

"Dear Sir:

Enclosed find 10 time claims dated August 24-25-26-27-28-31 and September 1-2-3-4, 1964. Please accept these time claims because of Removal of Regular assigned work by J. V. Lafferty, Yardmaster. Violation of Clerks' agreement."

The time claim for September 4, 1964, under the column headed "Explanation of Overtime and Calls", had the following words:

"Removal of Regular assigned work by J. V. Lafferty, Yardmaster in violation of Scope of Clerks' Agreement 1 hour overtime, and all following dates until the violation is corrected."

The Petitioner avers that because the Superintendent did not specifically mention "and all following dates until the violation is corrected" in his letter of November 3, 1964, the claim was disallowed in part and not in whole and therefore should be allowed as presented under Section 1(a) of Article V of the Agreement of August 21, 1954, which reads as follows:

"(a).....Should any claim or grievance be disallowed, the carrier shall, within 60 days from the date same is filed, notify whoever filed the claim or grievance (the employee or his representative) in writing of the reasons for such disallowance. If not so notified, the claim or grievance shall be allowed as presented, but this shall not be considered as a precedent or waiver of the contentions of the Carrier as to other similar claims or grievances."

We disagree. The denial of the claim by the Superintendent was all inclusive and had the effect of denying all of the claims presented to him. The failure to mention the words "all following dates until the violation is corrected." does not in any way lessen the effectiveness of the complete denial of the claim.

As we find that the denial of the claim by the Superintendent was proper under Article V we shall deny Items 3 and 4 of the Claim.

As to the question of exclusivity, the record reveals that it was properly and timely raised by Carrier during handling on the property. (Award 16550 and others).

As can be seen from the letter of September 30, 1964 to the Superintendent, quoted above, the claim was for the following dates "August 24-25-26-27-28-31 and September 1-2-3-4, 1964." When, on December 29, 1964, the General Chairman appealed the Superintendent's denial to the Assistant to Vice President the dates appeared as follows:

"August 23, 25, 25, 27, 28, 31
September 1, 2, 3 and 4, 1964"

It is on this basis that Carrier contends that the dates of August 24 and 26 are not properly before the Board. We do not agree. There is nothing more involved here than a patent error recognizable as such by the reasonable and prudent man. The record fails to show that any of Carrier's rights were prejudiced by the inadvertence or that it was in any way misled. The record supports our finding that it knew the dates involved from the previous correspondence with the Claimant.

As to Carrier's position regarding Items 3 and 4 of the claim, in view of our finding as to these Items above, we find it unnecessary to make a specific ruling on Carrier's contention.

Having ruled on the procedural questions raised by the parties we shall consider the merits. The parties hereto have been before this Board on many

occasions in matters involving the herein agreement and the Rules relied upon by Petitioner. With respect to Rule 1(e) it has been held by this Board: "Secondly, that 'position' is not synonymous with 'work', and that the Scope Rule involved herein is general in nature." (Award 14064 which relied on earlier cases involving the same parties and the same Rule such as Awards 11755, 12841 and 12360). The rationale of the Award was followed in other cases such as Award 17754. We can see no valid basis for not following the precedent and adopt the reasoning as our own. Uniformly the many Awards have held the herein Scope Rule to be general in nature. That being so Petitioner has the burden of proving that the work in dispute has been historically by custom, practice and usage exclusively reserved system-wide for the performance of the Employees herein. (Award 14155 and others). As the record does not contain such proof we have no alternative but to deny Items 1 and 2 of the Claim for lack of proof. Having already indicated our disposition of Items 3 and 4 of the Claim, we shall deny the Claim in its entirety.

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 Employee involved in this dispute are respectively Carrier and Employee 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 9th day of June 1972.