

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19274
Docket Number CL-19302

William M. Edgett, Referee

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

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6928)
that:

1. The Carrier violated the currently effective agreement between the Brotherhood of Railway, Airline and Steamship Clerks and the Union Pacific Railroad Company when, on January 3, 1970, Carrier utilized the services of Cashier Robert A. Coates to set up outbound billing, a duty reserved to General Clerk J. A. Eiman during the hours of his assignment at the Pocatello, Idaho Freight Station during his regular work week.

2. Carrier shall now be required to make Mr. Eiman whole by compensating him for wage loss suffered by him due to the mishandling on the part of the Carrier in the amount of five (5) hours and twenty (20) minutes at the time and one-half rate of pay of the position of General Clerk.

OPINION OF BOARD: On Saturday January 3, 1970 Carrier called a cashier to assist in closing accounts as early as possible after the end of the year. During his period of service the cashier forwarded and received way bills.

The Organization has processed this claim for a call for that date for the Senior General Clerk. It relies principally on Rule 41 (1) which reads:

"(1) Work on Unassigned Days. Where work is required by the carrier to be performed on a day which is not a part of any assignment, it may be performed by an available extra or unassigned employee who will otherwise not have 40 hours of work that week; in all other cases by the regular employee."

Carrier resists the claim on two grounds. It asserts a lack of jurisdiction here because the Organization failed to name the specific section of the Rule in making its claim. Further, Carrier says, the claim is bad because the Organization failed to prove that the duties complained of are not also assigned to the employee who performed them.

Carrier's jurisdictional point is strongly argued, but on this record it is not persuasive. The contention is grounded in an alleged failure to inform Carrier of the Organization's position and thus a failure to make the required effort to reach agreement. If the Organization had not made good faith effort to exhaust the possibility of agreement the point raised here would have much to commend it. However, the record shows that Carrier was well aware of the factual and Rule basis upon which the Organization relied. Carrier's Officer replied to the Organization's General Chairman as follows:

"In reviewing the rules upon which the organization is relying for support, I fail to see where any substantive support can be derived from any of these rules. The provisions as contained in them were properly applied to the employees whose services were utilized."

Following this letter the parties held a further conference and Carrier reaffirmed its previous denial in a letter dated August 6, 1970. The record simply does not reflect either lack of disclosure or lack of effort to reach agreement by either party. Carrier's jurisdictional argument is unsupported by it.

Carrier's assertion that the record shows that the Cashier performs the disputed duties during his regular workweek is without support. Carrier's Supervisor of Wage Schedules, in responding to the claim said:

"With the exception of approximately 30 minutes overtime, the functions performed by the Cashier on the claim date were functions related directly to his position on assigned work days and were not functions normally performed by the General Clerk."

The amount of time involved was disputed in further handling of the Claim. Carrier took the position that the work was not exclusively that of the General Clerk position. But nowhere in the record is there evidence that it withdrew from the recognition, implicit in the above statement, that the duties assigned to the Cashier on the claim date were not also assigned to that classification during the regular workweek.

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;

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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 violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: E. A. Killen
Executive Secretary

Dated at Chicago, Illinois, this 22nd day of June 1972.