NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 19770
THIRD DIVISION Docket Number CL-19844

Benjamin Rubenstein, Referee

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

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-7167) that:

1. Carrier violated Rules 2, 3, 5 and related rules of the Clerks' Rules Agreement, when, beginning March 9, 1971, it required Class "C" employes, Robert L. Plunkett and Fred Barkley to perform work regularly assigned to and performed by Class A and/or B employes.

2. Carrier shall now be required to compensate Caller-Messenger M. S. Johnson, eight (8) hours' pay at punitive rate for March 9, 10, 11, 12, 13, 16, 17, 18, 19, 20, 22, 23, 24, 25, 26, 27, 29, 30, 31, April 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 12, 13, 14, 15, 16, 17, 19, 20, 21, 22, 23, 24, 26 and 27, 1971, a total of forty three (43) claim dates, account Carrier's violation of the Clerks' Rules Agreement.

OPINION OF BOARD: Note 2 to Rule 2 of the agreement between the parties, reads:

> "Note 2 to Rule 2: In accordance with the practice that has been in effect in the past in setting up the classifications as outlined above, it is understood that employees occupying Class A positions may perform work of Class B and C positions; likewise, employees occupying Class B positions may perform work of Class C positions, so long as the higher rate is paid per Rule 31."

On the dates alleged in the claim, an employee classified as C was performing work of Class B. Claimant contends that he should have been doing the work involved, and in view of the fact that this would have been, to him, overtime work, he should be paid 8 hours pay for each day involved at punitive rates.

There is no dispute as to the facts involved. The sole issues are: 1) interpretation of Note 2 to Rule 2, above cited; and, 2) if said Rule was violated, the amount of pay claimant is entitled to receive.

Carrier objects to the claim on the ground that the agreement does not provide for exclusivity of jobs, and the Organization failed to prove it by evidence of past practice.

We agree with the Organization's interpretation of Note 2 to Rule 2. Although the contract by itself does not establish exclusivity of jobs, the note in question must be considered as intending to do so, as between the three classes of employees. It refers to a past practice, which is being clarified ("understood") to the effect that Classes A and B positions may perform work of Class C positions. The failure to grant similar permission to employees occupying Class C positions to perform work of Class A or B positions is striking. It can only lead to one conclusion; that employees in Class A or B positions may do work of Class C positions, but employees in Class C may not perform work in Class A or B positions.

That the Carrier agrees with this interpretation is evident from its failure to discuss the Note in question, either in its original submission or its rebuttal.

Award Nos. 13012, 18621, and others, heavily relied on by the Carrier, are distinguishable from the instant case. In those cases, the sole question was the general extent of the Scope Rule. In the instant case, we are confronted with an interpretation of the Note involved.

We have held in numerous awards that if the Carrier violated the agreement, it is subject to punitive damages, even if claimant did not suffer loss of wages (19441, 19635, 19337, 18942 and others).

There is no showing in the record as to the actual time consumed by Class C employe performing work of Class B. An additional day's pay for each day involved for the Class B employe does not appear justified. We will award that the Class B employe be allowed a minimum call in accordance with Rule 25(e) for each date specified in the claim.

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 Employes involved in this dispute are respectively Carrier and Employes 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 in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 25th day of May, 1973.