

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19831
Docket Number CL-19781

C. Robert Roadley, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship
(Clerks, Freight Handlers, Express and Station Employees
(
(Fort Worth and Denver Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-7077) that:

1. Carrier violated and continues to violate rules of the Current Clerks' Agreement, particularly Rule 1 and others when it allowed an employee not in any way covered by the rules of the current agreement to perform work assigned to the General Clerk.
2. Carrier shall now be required to compensate Mr. V. R. Tinsley at the punitive rate of the position of General Clerk beginning October 10, 1970 and continuing until this violation is corrected.

OPINION OF BOARD: The basic issue in this dispute is whether the Carrier violated the Agreement when it required a Roundhouse Foreman, not covered by the Agreement, to perform certain of the duties of claimant on claimant's rest days. The specific work involved is "working up lists for enginemen who are to be called for work. keeping records of trains and men laying off, *****." The record shows that prior to September 19, 1970, when the then incumbent Division Clerk retired, the work in question was performed by the Mechanical Foreman when the incumbent was not on duty as well as on his rest days. Upon the retirement mentioned above the remaining clerical duties of the position were absorbed by the general clerk, the position of Division Clerk having then been abolished. The work in question in this dispute continued to be performed by the Mechanical Foreman on the claimant's rest days.

The Petitioner, in handling this claim on the property, cited "particularly Rule 1 and others" in support of its position. Rule 1 is the Scope Rule of the Agreement. A review of the record shows that Rule 1, of the Agreement, is general in nature, in that it lists the positions covered by the Agreement but does not define the duties of such positions. We do not find that Petitioner has shown exclusivity to the performance of the work herein involved under the circumstances described in the claim. On the contrary, it is clear that for many years, on this property, the practice of having the work complained of performed by the Mechanical Foreman on the rest days of the Division Clerk was well established.

In Award 13362, we stated:

"The evidence in the record fails to disclose any proof that the work belonged exclusively to the Petitioner. ***** The Scope Rule is general in character. The Petitioner has failed to show, that by custom and practice on the property, the work belongs to them."

Also see Award 14604, wherein it was stated:

"Rule 1 - Scope lists only the job classifications for the covered employees. It neither defines nor describes the work of such employees. The numerous Awards of this Division have held that in this type of Scope Rule, the Petitioner must show that the disputed work has been historically, traditionally and customarily performed by the affected employees."

In its submission to this Board, Petitioner relied on the language of Rule 42(f), re Work on Unassigned Days, as also supportive of their position. However, a thorough review of the record before us, including the exchange of correspondence between the parties prior to their respective submissions to this Board, shows that this Rule was not cited by Petitioner during the handling on the property.

In Award 18964, it was stated, in pertinent part:

"We find that the organization, during the handling on the property, did not assert that a specific rule of the agreement had been violated by carrier, *****. This Board, in a long continuous line of awards, has repeatedly held that it is too late to supply the specifics for the first time in the submission to this Board because (1) it in effect raises new issues not the subject of conference on the property; and (2) it is the intent of the Railway Labor Act that issues in a dispute before this Board shall have been framed by the parties in conference on the property *****" Also see Awards 18442, 18122, 18006, 16733 and numerous others.

We concur in the rationale expressed in these prior Awards and find that Petitioner's introduction of Rule 42(f) in its submission to this Board was an effort "to mend its hold" and is, therefore, not properly before us.

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

For the reasons stated herein we find that Petitioner failed to satisfy the burden of proof that the work claimed was, under the circumstances involved, exclusively work belonging to claimant.

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Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

E. G. Killen
Executive Secretary

Dated at Chicago, Illinois, this 29th day of June 1973.