

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19939
Docket Number CL-19934

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline & Steamship Clerks,
(Freight Handlers, Express and Station Employees
(
(Duluth, Missabe and Iron Range Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-7152) that:

(1) The Carrier violated the effective Agreement, specifically Rule 1, Scope, and Rule 33, Assignment of Overtime, when Carrier employes not of this Craft and Class performed work at the Proctor Ore Scale which had customarily and historically been performed by Carrier employes of this Craft and Class prior to July 29, 1970.

(2) Claimants shall now be compensated for this violation as follows:

Richard D. Morrison for one day's pay at Assistant Chief Weighmaster rate for July 31, August 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 18, 19, 20, 21, 22, 25, 26, 1970, and all subsequent dates that the Carrier violates Rule 1, Scope, and Rule 33.

J. E. Peterson for one day's pay at Chief Weighmaster rate for August 2, 30, September 6, 13, and 20, 1970, plus one day's pay at Assistant Chief Weighmaster for July 29, 30, August 24, 25, 26, 27, 31, September 1, 2, 3, 7, 8, 9, 10, 14, 15, 16, 17, 21, 22, 23, 24, 1970, and all subsequent dates thereafter that the Carrier violates Rule 1, Scope, and Rule 33.

G. W. Miller for one day's pay at Chief Weighmaster rate for July 29, 30, 31, August 1, 3rd through 29th, 31, September 1 to 5, 7 to 12, 14 to 19, 21 to 26, 1970, and each subsequent date thereafter that the Carrier violates Rule 1, Scope, and Rule 33.

Thomas G. Thatcher for one day's pay at Assistant Chief Weighmaster rate for each date July 29 through 31st, August 1 through 23rd, 26 through 30, September 2 through 6, 9 through 13, 16 through 20, 23 through 26, 1970, and each subsequent date that the Carrier violates Rule 1, Scope, and Rule 33.

(3) The Weighmaster duties at the Proctor Ore Scale should be returned to Carrier employees of this Craft and Class.

OPINION OF BOARD: The Organization claims that its general Scope Rule was violated when the Carrier abolished certain Weighmaster positions and placed into operation an automatic weighing system.

The Carrier denies a violation and insists that the employees in question are simply seeking to remain to watch the automatic machine operate; which concept has been rejected by this Board. See Award 8656 (Guthrie) - accord Awards 9913 (Begley), and 14969 (Ritter). Further, the Carrier states that the work was not previously in existence, and therefore it could not be within the Scope of the Agreement. See Award 18544 (Devine) - accord Award 19694 (Ritter).

To prevail, the Organization must substantiate its claim by a preponderance of evidence; Awards 15536 (McGovern), 10067 (Weston) and 14682 (Dorsey) and must prove that the clerical work was, in fact, allocated to and performed by others. Award 14087 (Coburn). See also Awards 14157 (Hall) and 12848 and 12849 (Ables).

The Board has reviewed the claim as handled on the property and is unable to find, on balance, that the evidence preponderates in favor of the Organization. To be sure, the correspondence on the property contained numerous dates and conclusions, however a thorough reading of the documents does not reveal a clear definition of the precise work in question, nor does it adequately show the manner and times when clerical work was performed in violation of the Agreement.

In its Submission, the Organization laid great stress on Exhibit "S" - five pages of dates and times when the Scope Rule was allegedly violated. Exhibit "S" is a letter from a Local Chairman of the Organization to its General Chairman.

The Carrier member of the Board points out that Exhibit "S" was never presented to the Company. While that assertion could be considered as testimonial, in the Board's review we are unable to find any indication or reference that, in fact, said intra-Organization document was ever distributed to any Carrier Official while the matter was being handled on the property. While it is questionable that consideration of Exhibit "S" by the Board would alter this Award, nonetheless, absent an indication of record that the document was distributed to the Carrier (on the property) we must assume that it was not, and we are therefore precluded from a consideration of its allegations.

In the instant dispute, we note with favor Award 18148 (Dorsey):

"From the evidence of record we are unable to resolve the conflict. We, therefore, are compelled to dismiss the claim for failure of proof." (underscoring supplied)

For the reasons stated herein, the claim is dismissed for failure of proof.

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 dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A.W. Paulson
Executive Secretary

Dated at Chicago, Illinois, this 7th day of September 1973.

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