

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19954  
Docket Number CL-19771

John H. Dorsey, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,  
( Freight Handlers, Express and Station Employees  
(  
(The Central Railroad Company of New Jersey  
( (R. D. Timpany, Trustee)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-7094) that:

(A) Carrier violated the provisions of the Agreement, particular reference to Rule No. 1 (g), No. 7 (a), effective December 15, 1952 also Supplements to the Agreement, also violation of Exhibit No. 4, Regular Clerks' Extra List Agreement, Allentown-Bethlehem area, effective April 6, 1970, particular reference to Paragraph No. 9 (c) and No. 9 (d), when they failed to properly cover the position of Crew Clerk, 3:00 P.M. to 11:00 P.M., Friday, January 1, 1971, allowing same to be blanked and failing to properly cover Crew Dispatcher position, 11:00 P.M. to 7:00 A.M., Friday January 1, 1971.

(b) Carrier now be required to properly compensate claimant Kenneth A. Searfoss, regularly assigned to position of Crew Clerk, 3:00 P.M. to 11:00 P.M., assigned to position in accordance with the Bulletin Rule, additional twelve (12) hours, rate of position - \$32.09, not called to cover his position on date of violation in accordance with the rules under the Scope of the Clerks' Agreement.

(c) Carrier also be required to properly compensate claimant Kenneth A. Searfoss, additional twelve (12) hours, rate of position - \$32.09 per day, for being deprived the right to cover the temporary vacancy as Crew Clerk, 11: P.M. to 7:00 A.M., Friday, January 1, 1971.

OPINION OF BOARD: Claimant was regularly assigned to a five-day position of Crew Clerk A-9, second trick (3-11 P.M.). His rest days were Thursday and Friday on which days the position was regularly assigned to the occupant of Relief Cycle A-34-AY. On the claim date -- Friday, January 1, 1971, a Holiday -- the Relief position stood vacant and was up for bids.

Under date of January 11, 1971, Claimant filed claim which reads:

Enclosed find two penalty time cards claiming two separate penalties for January 1st 1971 for not being called on my relief days as the incumbent on the 3 PM to 11 PM Crew Clerk for this date and Mr. E. Flanley working my job.

I was at home all day on date in question and received no phone calls to cover my own job and no prior arrangements to cover job made by any one to have job covered on Holiday.

The schedule that was put out by Mr. Dougherty's office in regards to the Holiday listed the Crew Clerk jobs as working.

I therefore claim one penalty for not being called for my own assignment which was scheduled and also enclose a penalty day for denied the right to double on this date, for if I had been called for my own assignment, it would have put me in the wheel on the preceding trick and would have entitled me to the double. Instead Clerk G. Finn was used to cover the 11 PM Crew Clerk position.

As it was, Mr. Flanley covered my job and called Brakeman R. Rau for the 11 PM Yardmaster position and Clerk G. Finn for the 11 PM Crew Clerk position, which is clerical work and not supervisory personnel working, making it aviolation (sic) of Clerks' Agreement.

This is the claim processed on the property and is the only claim properly before us.

Carrier avers that it blanked the Relief Cycle position on the Holiday. Carrier had the right to do so; but, if work of the position was performed on the Holiday the right to the work was contractually vested in an employee covered by the Clerks' Agreement to be identified and selected as prescribed in Rules No. 7 (b) and for 19 (i).

Carrier does not deny that work of Relief Cycle position A-34-AY was performed on the Holiday by "Mr. E. Flanley," an employee not covered by the Clerks' Agreement. By application and interpretation of the afore cited Rules we find that Claimant stood to be called to perform the work of the Relief Cycle position on the claim date.

Carrier's proffered defense to not having called Claimant was its presumption that Claimant would have refused the assignment since he had refused nine offered assignments in the period from December 17 through December 31, 1970. Carrier's contractual obligation to call Claimant was not subject to avoidance or evasion on the predicate of Carrier's assumption. We, therefore, will sustain the claim as it relates to the second trick (3-11 P.M.), January 1, 1971.

The posture of the evidence of record makes it impossible for this Board to pass upon the merits of the claim as it relates to the "11 P.M. Crew Clerk position." We cannot speculate. Consequently, we are compelled to dismiss that portion of the claim for lack 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 Carrier violated the Agreement to the extent prescribed in the Opinion, supra.

A W A R D

Claim sustained in part and dismissed in part as prescribed in the Opinion, supra.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

A. W. Paulos  
Executive Secretary

Dated at Chicago, Illinois, this 28th day of September 1973.