

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20026
Docket Number CL-19989

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks
(Freight Handlers, Express and Station Employees
(The Kansas City Southern Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-7228) that:

(1) Carrier violated, and continues to violate, the current Clerk's Agreement, at Texarkana, Texas, seniority district No. 19, by transferring incumbent of so-called 2(a) position under the Clerk's Agreement, (Traffic Department) to position designated 2(b) (Transportation Department), and with no seniority rights in District No. 19, is caused or permitted to perform assignment duties of Claimant on a "catch-all" basis, even at penalty (overtime) rate.

(2) Carrier shall compensate the following Claimant, and for time claimed, account violation of Extra Board Agreement and rule 40(j), by use of improper employee to perform Claimant's assigned duties:

(a) -- L. L. Boggs for eight (8) hours on each of the following day; May 11, 12, 13, 14, 15, 17, 19, 20, 21, 22, 24, 25, 26, 27, 28, 29; June 1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 12, 14, 15, 16, 17, 18, 19, 21, 22, 23, 24, 25, 26, 28, 29, 30; July 1, 2, 3, 5, 6, 7, 8, 9, 10, 12, 13, 14, 15, 16, 17, 19, 20, 21, 22, 23, 24, 26, 27, 28, 29, 30, 31; August 2, 3, 4, 5, 6, 7, 16, 17, 18, 19, 20, 21, 23, 24, 25, 26, 27, 28, 30, 31, 1971.

OPINION OF BOARD: In addition to its assertion that the issues were disposed of by Public Law Board No. 861, the Carrier urges that the Organization has failed to substantiate its claim by a preponderance of the evidence. See Awards 15536 (McGovern), 10067 (Weston) and 14682 (Dorsey). An Organization must prove that clerical work was, in fact, allocated to and performed by others to the satisfaction of the Board. See Awards 14087 (Coburn), 14157 (Hall) and 12848 and 12849 (Ables).

The Statement of Claim refers to a violation of Rule 40(j):

"(j) 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."

The Organization stresses that this case differs from Public Law Board No. 861 (which considered an alleged violation of a Scope Rule) because the primary issue here is preference of senior employees to perform certain work on rest (unassigned) days.

This Board is unable to find substantive proof to support the position of the Organization. The claim specifies a number of dates on which, it is urged, Claimant should have performed certain work. In the original denial, a Company official requested a listing of the duties involved because of his understanding that clerical work in question was properly assigned. We do not find any such a definitive listing. Although the record contains generalizations regarding the duties that "Chief Clerk" Wells may have performed at certain times, it fails to designate, with any degree of certainty, the exact work performed by him.

The record is further confused by a statement of the Vice General Chairman that:

"The Brotherhood is in agreement that Chief Clerk J. L. Wells can do clerical work which is assigned to him but we are definitely not in agreement that Chief Clerk J. L. Wells can be used as a Fireman, so to say as to be used in any position that happens to get behind in its work."

Although the dispute evolves around "seniority" (and the parties dispute the seniority retention of Mr. Wells) the record, as handled on the property, fails to indicate the seniority status of the Claimant.

In short, a thorough reading of the entire record fails to reveal a clear definition of the precise work in question, nor does it adequately show the manner and times when the work was performed allegedly in violation of the Agreement.

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."

See also the Award 19939 of this Referee.

For the reasons stated herein, the claim is dismissed for failure of proof. Inasmuch as the claim is disposed of on these procedural grounds, no determination is made concerning other issues raised by the parties.

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 Claim be dismissed.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 31st day of October 1973.