

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20144  
Docket Number CL-20192

Frederick R. Blackwell, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,  
( Freight Handlers, Express and Station Employees  
PARTIES TO DISPUTE: (  
(The Long Island Rail Road Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-7320)  
that:

a) The Carrier violated the Agreements between the parties when they allowed or permitted Track Foreman George Bohnke, an employee not covered by the Scope of the Agreement, to perform clerical work eight (8) hours per day from February 23, 1972 to April 24, 1972 in the office of the Supervisor Track, located at Divide Tower, Hicksville, New York.

b) The Carrier shall now be required to pay Claimant E. A. White the overtime rate of pay for each and every day from February 23, 1972 to April 23, 1972 for said violation and in addition thereto one (1) hour per day travel time for each of above days that was allowed to Track Foreman Bohnke.

c) The Carrier further violated the provisions of Rule 4-D-1 of the Agreement between the parties when they failed to render a proper reason for disallowance of claim and did not claim they were not in violation of the provisions of the Agreements between the parties within the sixty (60) day time limit provided therein.

STATEMENT OF CLAIM: The Petitioning Clerks' Organization allege that the Scope of their Agreement was violated when the Carrier directed and permitted Track Foreman Bohnke to perform clerical duties in the Office of the Supervisor Track, Divide Tower, Hicksville, New York. The Petitioner argues that such work is covered by its Scope Rule and also that Carrier, in settlement of a prior claim, agreed that such work would be performed by clerical employees. The Carrier asserts that the disputed duties are normally performed by Maintenance of Way Inspectors and that the Foreman performed the duties while in training to become an inspector. Carrier further asserts that no agreement was made and that the duties in question have never been performed by clerical employees.

The parties also raise procedural issues. The Petitioner says the Carrier violated Rule 4-D-1 which requires a reason for denial of a claim, while the Carrier says the Organization did not cite the Scope Rule on the property. Neither of these procedural contentions have any substantive support

in the record and we shall therefore proceed to the consideration of the merits of the dispute.

The duties involved in the dispute are as follows:

- "1. Daily checking and correcting Daily Labor Distribution Sheets.
2. Daily checking and correcting of Material Distribution Sheets, and in some cases, preparing same for accounting purposes.
3. Keeping records of ties and rails used in the two subdivisions at Hicksville.
4. Checking and correcting IBM cards for Payroll each Wednesday."

The instant Scope Rule has been held to be a specific one and that "work once assigned by a Carrier to employees within the collective bargaining unit thereby becomes vested in employees within the unit and may not be removed 'except by agreement between the parties.'" Awards No. 1 and 2, PL Board No. 954 (Dorsey) involving disputes from this same property. Thus, if the disputed work was once assigned to clerical employees, the claim here is well founded. However, the Carrier has challenged the fact of assignment of the work to clerical employees and the Petitioner, in consequence, has the burden of establishing the challenged fact by probative evidence. Award 17949. In determining whether the Petitioner has met this burden, we have studied the following matters which are reflected in the record: (1) overtime work by claimant was terminated shortly before the performance of the disputed work by the Track Foreman; (2) the claimant's statement about the work; (3) Petitioner's Exhibit "G"; and (4) the parties' statements concerning settlement of a claim which lead to Award 18047.

With regard to overtime, the record shows that Claimant was performing some overtime prior to January 1972 and that such was terminated before the Track Foreman performed the disputed work between February 23 and April 24, 1972; however, the Petitioner has neither asserted nor offered evidence that the overtime was spent in performing the duties disputed herein or that the overtime was in any way connected with the disputed duties.

The Claimant's statement about the work, as found in his letter of claim dated April 24, 1972, is as follows:

"Much of this type of work is done by a Clerk at the Jamaica office of the Track Department (whose name is Vivian Wright). Since Mr. Bohnke's duties at Hicksville are strictly of a

"clerical nature, I claim time as outlined above.

According to the Advertisement for my position, Symbol D-23 Clerk-Typist, on which I bid, and was awarded same, effective July 7, 1971, my present work location is in the Office of Supervisor of Track, where Mr. Bohnke has performed his duties between Feb. 23, 1972 and April 24, 1972. However, since July 7, 1971 when I was awarded my job, I have been assigned to clerical and typing work in the Production Dept. trailer at Hicksville, under the direction of the Production Engineer. In connection with National Railroad Adjustment Board Docket CL-18282, Award 18047, the L.I.R.R. insisted that it had awarded a new clerical job for the work being performed by track employes, such as Mr. Bohnke, whereas, in fact, no such job had ever been created where it was advertised to be and the violation of the Clerk's Agreement has been a continuing thing ever since August 24, 1967 when I filed a previous claim."  
[Underlining supplied]

The foregoing statement neither contends nor offers evidence that the disputed work was performed by clerical employees at the Hicksville office. Indeed, the underlined portion of the statement tends to corroborate Carrier's contention that the disputed work has never been performed by clerical employees.

Exhibit "G", a report on a joint study of the operation of the Hicksville Track Department Office, shows that on May 15, 1968, the work in dispute here was performed by Maintenance of Way Inspectors. The work covered by this joint study, according to Petitioner, was found to be clerical work in Award 18047; in addition, and as shown by Exhibit "H" in that Award, such work was to be absorbed by a new clerical position which Carrier agreed to establish at Hicksville. The cited Award did sustain the employees' claims, but this was solely on the ground of Carrier's failure to comply with the time limit rule. Thus, that Award, not having made a finding on the merits, can have no significance to the merits of this dispute. Exhibit "H", as described in Petitioner's Submission, is a Carrier letter "advising that a new clerical position would be created at the Hicksville Office to absorb the clerical work as shown in Employees Exhibit "G" which was performed by Trackmen, M & W Inspectors and Foremen in violation of the Scope of the Clerks Agreement." Thus, Exhibit "H" in Award 18047, as described by Petitioner, would appear to have direct pertinence to the fact which Petitioner seeks to establish. However, Carrier has objected to the consideration of the exhibit on the ground that it was not considered on the property and, indeed, has not been included in the Petitioner's Submission to the Board. The Carrier's objection is well taken and we conclude that this Board is barred from consideration of Exhibit "H" in the docket of Award 18047; it is well settled that the Board is bound by the material properly included in the record before it.

Viewed in its most favorable light, the Petitioner's evidence makes no showing at all that the disputed work has been performed by clerical employees at Hicksville. The Petitioner's evidence does show that the work in dispute here was also in dispute in the claim leading to Award 18047 and that, in connection with such claim, the Carrier agreed to establish two new clerical positions at Jamaica and Hicksville. However, these facts alone are not sufficient for this Board to infer that the herein work was to be absorbed by the Hicksville clerical position. The Petitioner has not given us any direct evidence of the particulars of the agreement involving the new clerical positions and, thus, we have no basis for concluding that the agreement covered the work in dispute here.

On the basis of the foregoing, and the whole record, we conclude that the Petitioner has not met its evidenciary burden and we shall dismiss 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 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

The claim is dismissed as per Opinion.

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 15th day of February 1974.