

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20166
Docket Number CL-20333

Joseph A. Sickles, Referee

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

STATEMENT OF CLAIM: (as made by the Organization):

Claim of L. L. Boggs, Texarkana, Texas for eight (8) hours overtime on March 26, 29, 30, 31; April 1, 2, 1971, account Carrier using Yellow Cab Taxi Service to deliver waybills to SSW, MP and T&P Railway connections.

OPINION OF BOARD: Claimant asserts that Carrier violated the agreement when it removed way bill delivery from the Clerks' Agreement and contracted with a taxicab company to perform such work.

The Carrier filed intention to submit an Ex Parte Submission to this Board, which action, according to the Organization, shifted the burden of proof. This Board has consistently held that the party seeking allowance of a claim must shoulder the burden. Accordingly, absent any authority to support the position, we are not prepared to rule that the burden of proof is altered because the Carrier invoked the jurisdiction of this Board.

The Parties have presented a number of issues, and numerous Awards for our guidance; all of which have been thoroughly reviewed. On the property, Claimant originally asserted a violation of the Scope Rule, and stressed Rule 47. In one document, Claimant asserted that Carrier's action violated Rules 1, 2, 39(b), 47 and 49(b). However, during the handling on the property the Carrier was not advised on the nature of the alleged Rule 49(b) violation. Rule 49(b) is as follows:

"(b) Where the duties of a particular position materially decrease in volume, justifying abolishing a position, the remaining duties will be distributed among remaining positions doing comparably rated classes of work."

In the documents presented to this Board, the Organization relies heavily upon the Scope Rule and Rule 49(b). The Submission is, to a great extent, testimonial, asserting that a messenger position was abolished in 1957 and the work of that position was transferred to other clerical positions, which work was then transferred to a taxicab company in 1971. While Rule 49(b) was mentioned, during the handling on the property, the alleged facts of position abolition and resultant theories of violation were not. While the Board might, in individual cases, be persuaded to focus its attention solely upon the alleged violation of the Scope Rule (which was urged on the property) under this record we are precluded from doing so. In its Reply to Carrier's Submission, the Organization states:

"Furthermore, the Organization only relied on the Scope Rule to identify the positions of Time Desk Clerk as coming under the scope of the Clerk's Agreement, for the purpose of applying the governing Rule 49(b)..." (Double underscoring supplied)

We do not, in any manner, minimize the Organization's very crucial concern over work possession. But, the Organization must not only cite rules during the handling of the dispute on the property, it must offer the proof necessary to sustain a finding that the Rule was violated. It may not, any more than Carrier may, wait until the jurisdiction of this Board is invoked, to present its proof. The factual matters submitted to us should have been submitted to Carrier, so that Carrier could have presented information it felt material. Upon the entire record, we are compelled to dismiss the claim for failure of proof.

Inasmuch as the claim is disposed of on procedural grounds, we do not rule on other matters 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

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That the claim is dismissed.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: *A.W. Paulos*
Executive Secretary

Dated at Chicago, Illinois, this 28th day of February 1974.