

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20322  
Docket Number CL-20373

Joseph A. Sickles, Referee

(Brotherhood of Railway, Airline and Steamship  
( Clerks Freight Handlers, Express and Station  
( Employees  
PARTIES TO DISPUTE: (  
(Detroit, Toledo and Ironton Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood  
(GL-7340) that:

1. Carrier violated Rules 1, paragraphs (d)2, (d)3;  
Rule 24, as well as other related rules of the Clerks Agreement, in  
the Purchasing Department, commencing August 17, 1971, when the Car-  
rier arbitrarily and unilaterally transferred work assigned to posi-  
tions covered by our rules agreement to officials who are not covered,  
and

2. Carrier be required to compensate Ms. M. Vranesh eight  
(8) hours pay beginning August 17, 1971 and four (4) hours for each  
Saturday, and

3. Carrier be required to compensate Claimant Vranesh for  
each day the violation continues and/or the successors as set forth  
in Employees' submission.

OPINION OF BOARD: The Organization alleges a violation of the Scope  
Rule, stating that Carrier allowed purchasing  
agents and assistants to perform certain duties which belonged to a  
position which had been abolished.

The Organization relies, in the main, on Paragraph D of the  
Scope Rule:

"(d) Employees who occupy the positions listed in (c)  
of Rule 1 may perform work incidental and necessary to their  
regular assigned duties and temporarily assist other employees  
on occasions but work normally performed by other employees  
shall not be permanently transferred or assigned to the  
positions listed in (c) without discussion and approval of  
the Local Chairman which approval shall not unreasonably  
be withheld.

"This Agreement shall not prohibit employees not covered by this Agreement from performing clerical work incidental and necessary to their regular assigned duties, providing such assigned duties do not come within the purview of this Agreement. No work normally performed by an employee covered by the Agreement shall be performed, transferred or assigned to an employee not covered by this Agreement without discussion and agreement between the Management and the Local Chairman..."

In addition to its position on the merits, the Carrier has raised a procedural question in its Submission to the Board. The Carrier contends that the Organization's Statement of Claim is at substantial variance with the initial claim as submitted and handled on the property.

The Carrier notes that the initial claim stated:

"Claim in behalf of M. Vranesh, Clerk-Purchasing Department, Seniority Date 8/28/44, District No. 3, No. 26 of the current roster, Hours of assignment 8:00 A.M. to 4:30 P.M., Rate of pay, \$36.96 per day, Rest days, Saturday and Sunday, and that said claimant be paid her daily rate of pay at the punitive rate, plus any subsequent increases due her commencing Aug. 27, 1971, also including four (4) hours for Saturday when either Mr. Sanford and Mr. Messinger perform clerical work which comes under the purview of the agreement, and for every work day until these violations are corrected."

The Carrier notes the following "variances" between the initial claim and that submitted to the Board. Initially, there is a difference in dates, i.e., August 17, 1971 versus August 27, 1971. Secondly, it is noted that one claim speaks in terms of eight hours of pay, whereas the other claim requests that Claimant be paid a daily rate at the punitive rate. Thirdly, the claim submitted here requests compensation for Claimant and/or the "successors" which was not included in the original claim, and finally, one claim is more descriptive in language than the other.

It has been held by this Board, on a number of occasions, that if there is a substantial variance between the claim as submitted on the property and that presented to this Board, we are unable to resolve the dispute (Award 20017). However, after a thorough consideration of the entire record, and careful review of the State-

ments of Claim which are allegedly at variance with each other, we do not note a basis for dismissing the dispute. We are unable to note that the alleged variance misled the Carrier concerning the basic dispute (See Award 19034), and both the Organization and the Carrier submitted much of the same correspondence concerning the handling of the claim on the property. The difference in dates does not appear to have operated to the prejudice of the Carrier, and, in fact, constitutes a reduction in the amount of compensation sought. Moreover, we do not feel that addition of the word "successors" is fatal to a consideration by this Board of the merits of the dispute. See, for example, Awards 19917, 19034, 18950. Accordingly, we do not find merit in the Carrier's procedural argument.

Concerning the merits of the alleged violation of the Scope Rule of the Agreement, we are unable to find that the Organization has submitted a substantial preponderance of the evidence to establish a violation. For example, it is alleged that purchasing agents and assistants performed certain enumerated tasks on a regular basis:

- "A. Matching Ann Arbor invoices to confirming purchase orders.
- B. Writing of Purchase Orders
- C. Inserting vendors name, address, fob, shipping point, terms of payment, pricing and routing on DT&I Form 9702 for both roads.
- D. Tracing of materials
- E. Pricing of orders
- F. Posting of last prices
- G. Passing of invoices
- H. Issuing of Purchase Orders
- I. Issuing of Sales and delivery orders
- J. Posting and matching of DT&I Forms: AA-662, AA-663 and A-778.
- K. Obtaining records from files and filing same. This being done to get ordering information from previous orders. M. Vranesh has a list of the majority of vendors with all the necessary information required.
- L. Posting of inquiries, DT&I Form A-286
- M. Holding orders on desk to process upon arrival of Purchase notice, Invoice or Stock Cards.
- N. Making copies on Thermo-fax machine.
- O. Operates Graphic Science Machine exclusively."

After a period of time, when the matter was being handled on the property, the parties agreed to jointly check the operation. The joint check did not resolve the dispute, and both parties urge that the check supports its respective position.

After a thorough review of the record, we are unable to conclude that the joint check establishes a violation of the Agreement. With respect to Item "A", a check indicated that the purchasing agent had been performing said work "for years." Regarding Item "B", a check indicated that clerks, purchasing agents, and assistants all wrote purchase orders, at least as far back as 1964, and on occasion the purchase orders were written jointly.

Item "C" is a continuation of "B" and Item "D" appears minimal. Only two traces were recorded, both in 1969. One was done by a clerk and the other by a purchasing agent.

Items "E" through "I" have been jointly performed by clerks, purchasing agents and assistants, at least as far back as 1963. The joint check demonstrated no positive assignment of work to the Claimant or fellow clerks who were employed in the department at the time. In other words, the work would be performed alternately by purchasing agents and/or their assistants, and by clerks.

Item "M" merely relates to the location where purchase orders were held.

In Item "N", we note that the Organization's representative who participated in the joint check admitted that the Thermo-fax machine is available to all employees.

Regarding Item "O", it appears that the Assistant Purchasing Agent has used the graphic science machine exclusively since its installation.

We note that Rule 1(d) states:

"This agreement shall not prohibit employees not covered by this Agreement from performing clerical work incidental and necessary to their regular assigned duties..."

As stated above, our thorough review of the record fails to establish to the Board that the purchasing agent and his assistant have done anything more than performing work incidental and necessary to their regular assigned duties.

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 denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

A. W. Pauls  
Executive Secretary

Dated at Chicago, Illinois, this 12th day of July 1974.