

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20556
Docket Number CL-20448

Irwin M. Lieberman, Referee

(Brotherhood of Railway, Airline and Steamship
(Clerks, Freight Handlers, Express and Station Employees
PARTIES TO DISPUTE: (
(Norfolk and Western Railway Company (Lake Region)

STATEMENT OF CLAIM: Claim of the System Board of Adjustment No. 218 (GL-7382)
on the Lake Region (Former NKP), Norfolk and Western
Railway Company, that:

1. Carrier violated the Agreement between the parties when on January 11, 1972, Carrier official, Trainmaster B. Kilgore, was used to transport Yard Crew No. 211 from the West End of the Main Track to the West Yards shanty in violation of Rule 1 of the Clerks Agreement.

2. Carrier shall compensate Clerk R. E. Nay for a holiday call of five hours and twenty minutes at punitive rate in accordance with Rule 28 (a) and 28(d).

OPINION OF BOARD: Claimant held the position of Third Trick Consist Clerk at Carrier's Bellevue, Ohio Terminal, with hours of 11:45 P.M. to 7:45 A.M. Monday through Friday, rest days Saturday and Sunday. On Sunday, January 2, 1972, the Terminal Trainmaster transported a yard crew from the west end of the main track to the west yard shanty in the terminal. These facts are not in dispute.

During the handling of this Claim on the property, the Organization argued that Carrier, in assigning the transporting of the crew to a non-agreement supervisor, violated the Scope Rule of the Agreement as well as Rules 27(f) and 28(a). The latter Rules provide as follows:

(f) 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 furloughed or unassigned employee who will otherwise not have 40 hours of work that week, in all other cases by the senior available employee."

"28(a) Employees notified or called to perform work not continuous with, before or after, the regular work period, shall be allowed a minimum of three hours for two hours work or less, and if held on duty in excess of two hours, time and one-half will be allowed on the minute basis. Employees called to work

"on Sundays and specified holidays shall be allowed five hours and 20 minutes at the rate of time and one-half for four hours' work or less. Employees worked in excess of four hours will be allowed a minimum of eight hours at the rate of time and one-half, except as otherwise provided in first paragraph Rule 28(c)."

For the first time, with its submission, Petitioner submitted a series of bulletins, notices and advertisements all purporting to show that the work of driving train crews was included within the Scope Rule of the Agreement. Based on our rules, Carrier properly objects to the presentation of new material not submitted or discussed on the property; this material is clearly inadmissible (Awards 20132, 20336 and many others).

In its submission and rebuttal statements, Petitioner bases its position entirely on the contention that the work in question is covered by the Scope Rule by the bulletining and assigning of Clerks as Crew Drivers. From this point it is argued that Carrier had no right to assign the work to a supervisor not included within the Agreement. In its arguments before this Board, Petitioner, in addition to the above position, reverts to the argument that the provisions of the "work on unassigned days" Rule 27(f) are applicable.

Carrier, in its arguments on the property, in its submission and rebuttal and additionally in its arguments before this Board, relies exclusively on the position that the Scope Rule is general in nature (which is well documented) and that the work in question has been performed by many non-agreement personnel and hence does not belong exclusively to the covered employees. In support of its position Carrier cites Award 13195 which deals with an almost identical circumstance and rule as that herein, in which the Board held that (on another Carrier) job bulletins, notices and wage agreements covering the transporting of crews by clerical employees did not give rise to an exclusive contractual right.

The issue of work on unassigned days has been before this Board on many occasions and the Awards have clearly established the regular incumbent's right to the work without the necessity of proving exclusivity (e.g.: Awards 19439, 19267 and 20187). In view of the state of the record and the fact that exclusivity is not the determinative factor in this dispute, we shall make no findings with respect to that issue. However, the Claim must be sustained based on the provisions of Rule 27(f) and the consistent interpretation of similar rules by this Board.

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 Carrier violated Rule 27(f) of the Agreement.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulsen
Executive Secretary

Dated at Chicago, Illinois, this 13th day of December 1974.

DISSENT OF CARRIER MEMBERS TO AWARD NO. 20556 -
DOCKET NO. CL-20448 - (REFEREE LIEBERMAN)

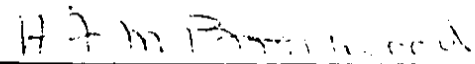
The claim before this Board stated specifically that Rule 1 (Scope) of the Clerks' Agreement was violated. In the organization's submission, and in its rebuttal brief, no mention is made of the unassigned day rule. As a matter of fact, the last statement made by the organization in its rebuttal brief reads:

"Since such positions were established and are maintained at Bellevue under the clerks agreement, the carrier is not permitted to now remove that work from the Scope Rule of that Agreement, and we ask your Honorable Board to so rule."


The issue of the work on unassigned days has no bearing on this dispute. The so-called 40-Hour Work Week Agreement dated March 19, 1949, contains this Rule in Article II, Section 3(i). It is not a reservation of work rule and has no effect on the Scope Rule.

The work here involved has never been performed exclusively by clerical employees. Many other classes of employees have transported crews in their privately-owned automobiles or in company-owned vehicles, not only at Bellevue but at other terminals as well. Also, at some terminals, crews are and, for many years, have been transported in taxi-cabs.

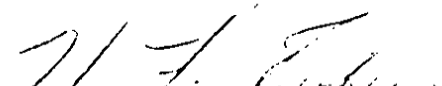
This Award is based on an erroneous premise and for that reason we must dissent thereto.



H. F. M. Braidwood



P. C. Carter



W. F. Euker



G. L. Naylor



G. M. Youhn