

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20605  
Docket Number CL-20666

Joseph A. Sickles, Referee

(Brotherhood of Railway, Airline and Steamship  
( Clerks, Freight Handlers, Express and Station  
( Employees

PARTIES TO DISPUTE:

(  
(The Belt Railway Company of Chicago

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-7519) that:

1. Carrier violated the terms and intent of the current Clerk's Agreement, when it required or permitted the occupant of Position #231, to perform on Saturday and/or Sunday work which was and is performed regularly Monday through Friday by the occupant of Position #206.

2. Claim that the occupant of Position #206, Mr. J. Bowan and/or successors, if any, be compensated eight (8) hours at the overtime rate of his position effective Sunday, September 24, 1972 and continuing each Saturday and/or Sunday thereafter until the violation is discontinued.

OPINION OF BOARD: The Organization claims eight (8) hours of compensation for the occupant of Position No. 206 concerning each rest day (Saturday and Sunday) since September 24, 1972, when individuals, other than Claimant, performed the work of weighing cars. It is Claimant's position that as occupant of position No. 206, he is assigned to weigh cars during his Monday through Friday work week, and performance by others on his rest days violates the "Work on Unassigned Days Rule" Rule 38 (j):

"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 forty (40) hours of work that week; in all other cases by the regular employee."

On the property, the parties exchanged contentions as to whether the rule of "exclusivity" is applicable. While certain Referees have held that Claimant must demonstrate "exclusivity" in order to prevail in this type of dispute, the weight of authority is to the contrary. A regular incumbent need not prove "exclusivity" in order to prevail in a "work on unassigned day" dispute, and Carrier's argument to the contrary is without merit. See, for example, Awards 18346, 19219, 19322, 19439 and 20187.

Nonetheless, Carrier notes that while the occupant of Position No. 206 does, during his normal work week, weigh cars, other employees covered by the Agreement also weigh cars during their regular assignments - and certain of the regular assignments overlap Claimant's work week. The Board feels that this assertion has merit, and disposes of the dispute.

We find that employees other than Claimant weighed cars during their regular work week. The record shows a listing of cars weighed during calendar year 1972. Over 700 cars were weighed on over 200 days. On 109 Mondays through Fridays, Claimant weighed 375 cars. But, on 38 other Mondays through Fridays (during the same hours of Claimant's assignment), occupants of Positions 201, 233 and Relief 3, weighed 150 cars. On 56 Saturdays and/or Sundays, the occupants of Positions No. 201 and 233 weighed 216 cars.

The record shows that although Claimant weighed approximately one-half ( $\frac{1}{2}$ ) of the cars during 1972, the occupants of three other positions weighed the remaining one-half ( $\frac{1}{2}$ ). Thus, while it appears that Claimant was regularly assigned to weigh cars during his work week, the occupants of three (3) other positions were also regularly assigned to the work as well.

We are unable to find that Carrier violated Rule 38(j) by utilizing the services of occupants of positions who performed substantial amounts of weighing during their regular work weeks (contemporaneously with Claimant's work week) on Claimant's rest days.

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.

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Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

A. W. Parker  
Executive Secretary

Dated at Chicago, Illinois, this 31st day of January 1975.