

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20714
Docket Number CL-20398

Frederick R. Blackwell, Referee

(Brotherhood of Railway, Airline and Steamship
(Clerks, Freight Handlers, Express and
(Station Employees
PARTIES TO DISPUTE: (
(Burlington Northern Inc.

STATEMENT OF CLAIM: Claim of the Burlington Northern System Board of Adjustment (GL-7378) that:

1. The Carrier violated the rules of the current Clerks' Agreement which became effective March 3, 1970, when it, by directive, ordered the crew calling at Kelly Lake to be performed by employees of other crafts or by employees in the Crew Office at Superior, Wisconsin, outside the regularly assigned hours of the Chief Clerk at Kelly Lake; and,

2. The Carrier shall now be required to compensate Joseph Milkovich, Chief Clerk, Kelly Lake, a two hour call for each instance calls were made outside of his assigned hours on the following dates:

November 6, 1971 - Superior Crew Office called Extra Brakeman John Rogers at 6:30 A.M. to cover Brakeman Harry Cammilli, laying off 7:30 A.M. Kelly Lake mine run.

November 7, 1971 - Operator Helen Pederson called Extra Brakeman George Hill at 5:30 A.M. to cover Brakeman C. W. Ross, laying off 6:30 A.M. Bovey mine run.

November 7, 1971 - Superior Crew Office called Extra Brakemen John Rogers and P. Cerrano at 7:00 A.M. to cover Brakemen W. J. Beasey and G. P. Rukavina, laying off 8:00 A.M. Kelly Lake mine run.

November 10, 1971- Superior Crew Office called Extra Brakeman G. W. Hill at 6:30 A.M. to cover inducted Brakeman E. Blazina to cover Conductor J. Burke, laying off 7:30 A.M. Kelly Lake mine run.

- November 14, 1971 - Operator at Grand Rapids called Brakeman Harry Camilli that he was displaced by Brakeman G. P. Rukavina; also, Operator at Kelly Lake called Brakeman G. P. Rukavina that he was displaced by Brakeman C. W. Ross.
- November 24, 1971 - Operator Ray Carlson called Extra Brakeman J. Sullivan at 7:00 A.M. to cover Brakeman C.W. Ross laying off 8:00 A.M. Kelly Lake mine run.
- November 26, 1971 - Superior Crew Office called Extra Brakeman V. Loken at 7:00 A.M. to cover Brakeman C. W. Ross, laying off 8:00 A.M. Kelly Lake mine run.
- November 28, 1971 - Superior Crew Office called Extra Brakeman V. Loken at 7:00 A.M. to cover Brakeman C. W. Ross, laying off 8:00 A.M. Kelly Lake mine run.
- November 29, 1971 - Operator Ray Carolson called Extra Brakeman G. P. Rukavina at 7:00 A.M. to cover Brakeman C. W. Ross, laying off 8:00 A.M. Kelly Lake mine run.
- December 19, 1971 - Superior Crew Office called Extra Brakeman L. Magestad at 6:30 A.M. to cover Brakeman H. Camilli's vacation on the 8:00 A.M. Kelly Lake mine run.
- December 24, 1971 - Superior Crew Office called Extra Brakeman John Rogers at 7 A.M. to cover Brakeman C. W. Ross laying off 8 A.M. Kelly Lake mine run.
- December 26, 1971 - Superior Crew Office called Extra Brakeman John Rogers at 7 A.M. to cover Brakeman C. W. Ross laying off 8 A.M. Kelly Lake mine run.
- December 31, 1971 - Superior Crew Office called Extra Conductor L. Downes at 6:30 A.M. to cover Conductor L. Taggart laying off 7:30 A.M. Kelly Lake mine run.

- January 6, 1972 - Superior Crew Office called Extra Brakeman Emil Blazina at 6:30 A.M. to cover Brakeman C. W. Ross laying off 7:30 A.M. Kelly Lake mine run.
- January 10, 1972 - Superior Crew Office called Extra Brakeman Emil Blazina to cover Brakeman Michael Ficke laying off 7:30 A.M. Kelly Lake mine run.
- January 11 & 12, 1972 - Superior Crew Office called Extra Brakeman Emil Blazina at 6:30 A.M. to cover Brakeman C. W. Ross laying off 7:30 A.M. Kelly Lake mine run.
- January 15, 1972 - Superior Crew Office called Extra Brakeman W. J. Beasy at 6:30 A.M. to cover Brakeman Emil Blazina laying off 7:30 A.M. Kelly Lake mine run.
- January 16, 1972 - Superior Crew Office called Extra Brakeman W. J. Beasy at 7:00 A.M. to cover Brakeman Les Taggart laying off 8:30 A.M. Kelly Lake mine run.
- January 17, 1972 - Superior Crew Office called Extra Brakeman Harry Camilli to cover Brakeman Emil Blazina laying off 7:30 A.M. Kelly Lake mine run.

and each succeeding date that crews are called by other than the Chief Clerk at Kelly Lake.

OPINION OF BOARD: This claim involves the same Claimant and essentially the same facts that were involved in Docket CL-20634, which has been considered and determined by this Board in Award No. 20376. Thus, the claim involves a split grievance and, for that reason, the claim will be dismissed.

This is the second of two claims filed by the same Claimant in connection with essentially the same facts. The first claim was filed under date of November 15, 1971 for compensation relative to Kelly Lake, Wisconsin, crew calling work being performed on Saturday and Sunday from the Superior, Wisconsin, crew office in contravention of Rule 37 assignment of overtime and Rule 37 F. This claim was sustained in Award No. 20376 to the extent that compensation was allowed under the call rule (Rule 38) for the period November 7, 1971 to December 14, 1972.

Also on November 15, 1971, the Claimant filed the claim which is involved in this docket. This claim is also predicated on Rule 37 and 37 F having been violated by reason of Kelly Lake crew calling work being performed from the Superior crew office. In this instance the claim seeks compensation at the rate of a 2 hour call for each disputed call made from the Superior office. During oral argument on this claim, the Carrier representative stated without contradiction that nine of the twenty dates involved in this claim were also involved in the claim determined by Award No. 20376. Thus the herein claim not only presents for a second time a grievance which has been before the Board in a prior proceeding, but also presents a claim which is substantially duplicative of the dates involved in the first claim.

To the extent that this claim is duplicative of the dates involved in the first claim which was determined by Award No. 20376, this claim must be dismissed on the basis of res judicata. The remainder of the claim manifests a splitting of a grievance which is not favored by this Board. As stated in Award No. 474 (Fourth Division):

"...such splitting up of controversies as is here involved is neither fair to the carrier nor conducive to the effective performance of the Board's work. In Award No. 1215, the Third Division said: 'There is neither reason nor justice in a rule which would permit an employee to divide a question into as many parts as may suit his convenience, without regard to the inconvenience thereby occasioned his adversary'; and in Award No. 6334, the First Division said: 'The question is whether the same controversy may be brought to this Division piecemeal, a practice which would seem not to be contemplated by the provision of Section 3 (m) of the Railway Labor Act, and which is neither fair to the parties nor proper practice if the Division is to function efficiently....'"

While there may be instances in which the splitting of a grievance may be satisfactorily explained, either explicitly or implicitly, no such explanation is apparent in the record of this case. The principles quoted from Award No. 474 are therefore applicable and the Board concludes that the Claim should be dismissed.

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. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 16th day of May 1975.