

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20840
Docket Number CL-20759

Louis Norris, Referee

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

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood,
GL-7536, that:

1. Carrier violated the current Clerks' Agreement, particularly the Scope Rule, when it allowed and continues to allow Accountant Bruce L. Kerr, Corporate Accounts Office, Washington, D. C. to perform duties which are assigned to and customarily performed by clerical employees; and

2. Carrier shall be required to compensate Maryanne U. Conlan a day's pay at the punitive rate of her position, beginning February 13, 1968 and thereafter for each day the violation is allowed to continue.

OPINION OF BOARD: In this dispute, the Organization contends that the Carrier allowed Accountant Kerr, an excepted supervisory employee, to perform duties which were assigned to and customarily performed by clerical employees, specifically Claimant Conlan. Demand is made for compensation to Claimant as detailed in the Statement of Claim.

Carrier asserts that Kerr did not perform routine clerical work, as alleged by the Organization, but, in fact and actual practice, worked directly with Management in setting up accounting systems for the varied business operations of Carrier; worked directly with public and government auditors in matters relating to taxes and handling of various consolidated transactions; reviewed general procedures of various consolidated computer programs; supervised the day to day financial accounting systems and the timeliness and accuracy of the many accounting reports required in Carrier's business, together with diverse other accounting functions and supervisory responsibilities. Furthermore, that Kerr did not perform the work customarily assigned to and performed by schedule clerks.

Carrier contends that the instant claim should be dismissed for lack of proof in that, during the processing of the claim on the property, no probative evidence was submitted by the Organization sufficient to establish in factual detail that Kerr performed any work belonging solely and exclusively to Claimant or to any other schedule clerks.

In actuality, comparison of the duties of Claimant with the functions, scope and responsibilities of Accountant Kerr clearly reveals the wide difference between them, and evidences conclusively the fact that Kerr acted primarily and principally as a professional Accountant, with wide areas of responsibility, discretion and independent judgment. The record evidence amply supports these conclusions. Nor has the Organization offered specific factual and detailed evidence to the contrary.

In these circumstances, therefore, we find that Carrier's contentions are well founded, requiring the dismissal of this claim for lack of proof.

Additionally, Carrier cites prior Award 20791 (Sickles) as controlling, on the ground that the latter dispute involved the same alleged violation, the same principals, the same Claimant and the same time period as are involved here. Carrier argues, therefore, that the dismissal of the claim in that dispute is conclusive upon us in this dispute under the principle of res judicata.

We sustain the res judicata defense asserted by Carrier. For, it is well settled that a prior dismissal Award, even if without prejudice, is a final disposition and precludes subsequent decision on the resubmitted claim.

See Awards 20374(Bergman), 10952(Ray), 10516(Miller), 9451(Grady), 9255(Weston) among many others.

Parenthetically, the following language from Award 20791, supra, is particularly pertinent to the merits of this dispute:

"The Board is of the view that Carrier has properly relied upon a 'burden of proof' defense. We have considered the handling on the property and are unable to detect that Claimant has submitted to us sufficient information as a basis for a finding of a violation.

"This is not to say, in any manner, that this Board is insensitive to an allegation of a 'Scope Rule' violation. However, the rule in question has been labeled (and properly so) as 'general' in nature (see, for example, Award 19923) and in order to prevail under such a rule, the Organization must supply us with proof that the work in question has been performed historically, traditionally and by custom, on an exclusive - systemwide basis. No such proof has been presented and accordingly, we will dismiss the claim for failure of said proof."

We concur fully in the findings and conclusions above quoted and, accordingly, we will dismiss the instant claim.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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 dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

G. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 24th day of October 1975.