

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20942
Docket Number CL-20851

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE:

{ Brotherhood of Railway, Airline and Steamship
{ Clerks, Freight Handlers, Express and
{ Station Employes
{ Chicago, Milwaukee, St. Paul and Pacific
{ Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-7588) that:

1. Carrier violated the Clerks' Rules Agreement at East Moline, Illinois when it used a DRI&NW Railway Switchman to perform clerical work on Cashier Position No. 20860

2. Carrier shall now be required to compensate employe R. O. Kehl for eight (8) hours at the time and one-half rate of Position 20860 for the following dates: Jan. 3,4,5,8,9,10,11,12,15,16,17,18,19,22,23, 24,25,26,28,29 and 30, 1973.

OPINION OF BOARD: The dispute herein is based on the allegation that Carrier used an individual who was not a bona fide employe to fill certain vacancies on the dates specified in the Claim.

The essential argument propounded by Petitioner is that Mr. Bunker, the individual who filled the positions in question, was both an extra unassigned clerk with Carrier at the same time he functioned as a Switchman with the DRI&NW railroad. Petitioner argues that the work belongs to the employes covered by the Agreement and Bunker was not such a bona fide employe. Further, it is contended that this Board has ruled that work normally performed determines the "regular employe".

Carrier refers to Rule 3 (a) which states that: "Seniority begins at the time an employe's pay starts in the seniority district and on the roster to which assigned." Carrier states that Bunker established seniority on December 13, 1972 when he worked a vacancy because of the regular incumbent's illness. Further Carrier states that Bunker resigned from the DRI&NW on December 10, 1972 and got his regular assignment on Carrier's property on January 31, 1973. During December and early January it is readily admitted by Carrier that Bunker worked a few assignments as a switchman for his former employer, while waiting for assignments from this Carrier. Carrier argues that the fact that Bunker worked for another Carrier while his status with this Carrier was that of an extra unassigned clerk had no bearing on whether or not he was a bona fide employe.

Apparently Petitioner is concerned primarily with the fact that Bunker worked in another craft during the time he was an unassigned clerk. There is controversy over the date of Mr. Bunker's resignation from the DRI&N; we do not deem this to be of consequence since his intent is controlling - rather than the fact of other employment. Petitioner relies in part on Award No. 2 of Special Board of Adjustment No. 452 which involved the same parties and a related issue; in that Award the Board held:

"This does not mean, however, that under this Agreement the Carrier has the right to shift employes back and forth from one craft to another. In other words, the hiring must be bona fide. To hold otherwise would render the scope and overtime provisions of the Agreement meaningless."

However, the balance of that Award clearly indicates that the intent of the employe who is thought to be anything other than bona fide must be determined by the actions of that individual. In this case Mr. Bunker began his service as an extra unassigned clerk and subsequently bid on a position and became regularly assigned, as indicated above. The fact that Bunker's overlapping employment was with another railroad has no significance whatever; he could have been a school teacher or had any other type of employment so long as he did not work for this Carrier in another craft. As we said in Award 10299 (and also supported in Award 20462) which involved the same parties herein:

"The fact that he had outside employment, does not in and of itself prevent him from being a bona fide employe. As an employe he is entitled to such rights as the Agreement provides - no more, or less."

The record herein reveals that the Organization has failed to support its claim with evidence that any rule has been violated. In view of this conclusion, we do not deem it necessary to deal with the time limit questions raised by Carrier.

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 Employes involved in this dispute are respectively Carrier and Employes 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

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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. Paulos*
Executive Secretary

Dated at Chicago, Illinois, this 30th day of January 1976.