

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20981  
Docket Number CL-20817

Joseph A. Sickles, Referee

PARTIES TO DISPUTE:

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

(Robert W. Blanchette, Richard C. Bond, and  
( John H. McArthur, Trustees of the Property  
( of Penn Central Transportation Company,  
( Debtor

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood  
(GL-7563) that:

(1) The Carrier violated the Rules Agreement, effective February 1, 1968, except as amended, particularly Rule 4-A-1, 7-A-1, 4-C-1, Scope Rule, Memo of Understanding. When on November 20, 1969 and all subsequent dates, until claim is adjusted, it allowed J. C. Bettwy and Ken Veit and other electricians employed in the Battery Shop to haul batteries and other material related to the building up and repairing of batteries. They have been using the new electric fork truck recently purchased. There is a established truck operators position at this location covered by the Clerks Agreement held by R. E. Wilson. If the work load is sufficient enough to have two or more electricians hauling company material, management is bound by the Clerks Agreement to advertise another position. It seems ridiculous to pay two electricians the sum of seven dollars and forty cents per hour, when management can have the same job done by a regular truck operator for three dollars and eight cents per hour.

No other class or craft post bulletins for positions, listing industrial truck operators, tractor Fork Truck, Caterpillar, sweeper, Chore Boy operators and truckmen.

I am listing bulletin numbers showing this: N-194, P-214, N-127, T-331, P-330, P-474, P-482, T-1, T-11 and T-70.

We find that the hauling of Company material by electricians is in no way incidental to the function of repair work, therefore we claim the exclusive right to the hauling of company material.

And in conclusion if management has in the past on occasion used personell not covered by the Clerks Agreement to transport company material. It was then and is now, in violation of the Clerks Agreement. We have many claims paid our employees due to shop craft personell not covered by the Clerks Agreement hauling company material.

That Mr. E. R. Utz, roster number 33, occupation truck operator, be paid eight (8) hours wages at time and half rate, for the above mentioned dates and all subsequent dates until the claim is adjusted. (Docket 2667)

OPINION OF BOARD: On November 29, 1969, Carrier permitted electricians to operate the new "Clark" highlift truck for transportation of batteries. Claimants assert that prior to said date, Clerks operated all industrial equipment relative to the stacking of batteries and delivering same to and from the shop.

Although Claimants operate under a General Scope Rule, they state that only bulletins advertising positions to clerical employees refer to operations of all type of industrial equipment.

Carrier states that the "Clark" Transtacker is operated solely within the confines of the shop by electricians to handle the cycling and stacking of batteries. Moreover, Carrier states that the electricians have performed the same work, for many years, with a similar type of Transtacker, and that Clerks continue to deliver batteries to and from the shop. It is conceded that the new machine is ridden by an electrician whereas the old one was operated from a walking position.

The Organization which represents the Electricians supports Carrier's contentions.

The Employees assert that the Carrier failed to respond to its claim within the contractually required thirty (30) day period. Carrier asserts that it did not receive the January 28, 1970 claim until February 3, 1970 and that its March 3, 1970 denial was submitted within twenty eight (28) days. We have considered the suggestions and counter suggestions of possible devious activities concerning self-serving accusations of when letters were forwarded and received. To dispute an assertion of receipt - when the date suggested is not unreasonable when compared to the date assertedly transmitted - requires some showing of intentional evasion. Nothing has been submitted here other than conjecture. We also note a significant time lapse before Claimant raised the issue. We conclude that the denial was submitted in a timely fashion.

As we read the record, and consider the contentions advanced, it appears that the Employees express concern and assert an Agreement violation, because electricians were utilizing the equipment outside of the shop - as contrasted to Carrier's insistence that the use by the electricians was confined to the shop.

We are unable to find any substantive evidence of record to support the Employees' claim that the Electricians were delivering batteries

"to and from the shop", or doing any work other than the same type performed previously within the confines of the shop.

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 claim is dismissed for failure of proof.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

A. W. Pauls  
Executive Secretary

Dated at Chicago, Illinois, this 27th day of February 1976.