

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21382  
Docket Number CL-21370

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,  
( Freight Handlers, Express and Station Employees  
(  
(The Pittsburgh and Lake Erie Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood,  
GL-7928, that:

(a) The Carrier violated the Rules Agreement, effective September 1, 1946, particularly the Scope Rule thereof, when it required or permitted employees outside the Scope of the Rules Agreement between the parties hereto to perform clerical work.

(b) The following employees be compensated for one minimum days' pay, at the applicable pro rata rate, for each of the dates shown after their respective names:

R. D. Dunegan, September 18, 1973  
H. J. Meyers, September 4 and October 5, 1973  
R. N. Erickson, August 8, August 23 and October 18, 1973  
J. F. Frush, September 15, 1973  
H. G. Montgomery, July 28, August 18 and August 26, 1973

OPINION OF BOARD: This dispute involves the alleged performance of clerks' work by yardmasters in derogation of the Agreement.  
Rule 1 (e) of the applicable Agreement provides:

"(e) Positions or work within the scope of this Agreement belong to the employees covered thereby and shall not be removed therefrom without negotiation and agreement between the parties signatory thereto."

We have held in the past that under Rules such as that above all work being performed under the Clerks' agreement is preserved to the Organization until it is negotiated out (see Award 19719 in particular as well as Awards 6357, 7129, 8500, 11072 and 12903).

Petitioner claims, and Carrier admits in its rebuttal statement that the work of checking tracks, listing of the cars thereon, and the preparation of switch lists has been traditionally recognized as belonging to clerks. The sole significant issue in this dispute is whether or not such work was performed by the yardmasters, as Petitioner claims.

It should be noted that Petitioner's reliance on certain claims which were paid on the property is not well taken. Those claims were paid based on the time limit for handling claims rules and cannot be considered to constitute a precedent. In addition, the submission of a Carrier notice dated November 15, 1974 as evidence, was improper since that action followed the completion of the handling on the property and hence may not be considered by us.

Carrier contends that the yardmasters, on the dates of the various claims, merely made corrections of the switch lists prepared by machine by the clerks and also added track numbers, as was their responsibility. We have no quarrel with those specified functions of the yardmasters. However, a perusal of the record indicates that yardmasters did indeed prepare handwritten switch lists as well as make significant additions to machine prepared lists, in addition to their normal functions as indicated above. Since it is quite clear that all additions to switch lists should be prepared by clerks, as well as their initial preparation, these actions by the yardmasters constituted a prima facie violation of the Agreement. For this reason, the Claims must be sustained.

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;

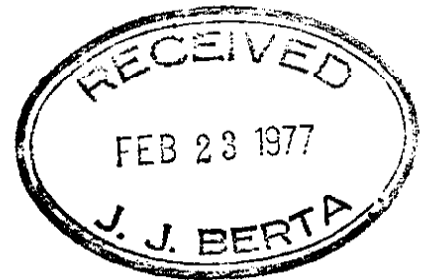
That the Carrier and the Employee involved in this dispute are respectively Carrier and Employee within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was violated.

A W A R D

Claims sustained.



NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

*A. W. Pauls*  
Executive Secretary

Dated at Chicago, Illinois, this 28th day of January 1977.