

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21658
Docket Number CL-21440

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-7985, that:

(a) The Carrier violated the Rules Agreement, effective February 1, 1968, particularly Extra List Agreement 20 (O), Rule 5-C-1 and other rules when it assigned Station Department employees the clerical duties of checking outbound tracks at Shire Oaks, Pennsylvania yard, matching waybills with cars and generating required data origination messages on same.

(b) The following named claimants be allowed eight (8) hours at the pro rata monthly rate of \$869.30 for each of the dates indicated account of the violation:

Case 10-73

H. E. McCann	October 27, November 2, 10, 1972
D. M. Vojnik	October 26, November 4, 8, 1972
T. J. Thoburn	October 24, 28, November 5, 1972
E. B. McCusker	October 22, 23, 29, November 26, 1972
C. E. Vesley	October 20, November 9, 16, 1972
W. P. Veres	October 25, November 15, 22, 1972
T. J. Pyda	October 31, November 1, 21, 1972
J. J. Dobosh	November 7, 14, 29, 1972
J. H. Branch	November 6, 24, 30, 1972
E. K. Porter	November 13, 20, 25, 1972
J. F. Jobes	November 11, 28, 1972

Case 46-73

T. J. Thoburn	December 2, 9, 14, 21, 23, 1972; January 10, 24, 31, 1973
H. E. McCann	December 13, 20, 27, 1972, January 6, 17, 27, 1973
D. M. Vojnik	December 6, 16, 30, 1972, January 13, 20, 1973
E. B. McCusker	December 1, 10, 19, 26, 1972, January 3, 8, 14, 21, 28, 1973
W. P. Veres	December 5, 12, 1972, January 2, 9, 16, 23, 30, 1973
T. J. Pyda	December 7, 14, 21, 28, 1972, January 4, 11, 18, 1973
C. E. Vesley	December 8, 15, 22, 29, 1972, January 5, 12, 19, 26, 1973

OPINION OF BOARD: Claimant alleges that on the claim dates, Carrier did not utilize employees on Extra List 20(O) to check cars (matching way bills with cars and generating required data origination message) in Shire Oaks Yard, nor did it use regularly assigned clerks entitled to be called for work protected by Extra List 20(O), when said list is exhausted. Rather, it utilized regularly assigned clerks who were employed at the Clairton Station Department, who had to travel 7 miles to Shire Oaks to perform the duties.

Claimant cites Rule 5-C-1:

"Where extra employees are used extra boards will be established by agreement between the appropriate officer of the company and the Division Chairman. The number of extra employees to be used and the manner in which they will work will be determined by written agreement between the appropriate officer of the company and the Division Chairman."

and asserts that List 20(O) was established thereunder to serve the territory here under consideration. The employees also refer to asserted violations of Rules 4-A-1(i), 2-A-1, and 4-C-1.

An integral ingredient to the Employees' claim is that Clairton-based employees "checked tracks" and "checked cars" at Shire Oaks Terminal, and they assert that Carrier's October 20, 1972 instruction confirms that assertion. Carrier disagrees, and asserts that the work in question was limited to the regular performance of duty by Clairton employees.

As we read the October 20, 1972 document, it instructs employees to "pickup" the wheel report. We see nothing in the document, or elsewhere in the record, which demonstrates that the employees, "checked cars", "checked track", etc.

Based upon our review of this record, we do not concur with Claimant's assertion that Carrier failed to challenge "factual assertions" while the matter was under review on the property.

The Employees violently disagree that nothing but "messenger service" was involved in this dispute. Be that as it may, this Board can only assess - and rule on - evidence of record; we may not engage in speculation. We are inclined to dismiss the claim based upon the Claimant's failure to sustain the burden of proof that the work was, in fact, performed in the manner alleged.

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

That the claim be dismissed.

A W A R D

Claim dismissed for failure of proof.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 18th day of August 1977.