

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21688
Docket Number CL-21180

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employes
(
(The Baltimore and Ohio Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-7798) that:

(1) Carrier violated the Agreement between the parties when it failed to assign clerical work to employees covered by said Agreement and did assign such work to employees not covered by said Agreement at Indianapolis, Ind., and

(2) Mr. B. O. Butler shall be paid 8 hours' pay at overtime rate for August 1, 1971 and each subsequent date, 7 days per week, until January 3, 1972, at which time the involved clerical work was terminated.

OPINION OF BOARD: The Employees assert that Yardmasters were instructed to prepare daily "tonnage" reports in connection with freight cars on tracks in State Street and Moorefield Yards, Indianapolis, Indiana, which work, it is alleged, is clerical in nature.

Claimant has raised a procedural issue asserting that Carrier's initial denial did not comply with Rule 48(a) in that it failed to give "reasons for such denial." We do not agree that the denial was fatally defective and, accordingly, we will dispose of the dispute on its merits.

Clerical personnel have compiled tonnage figures at the location in question and delivered the report to the Operator for transmission to the Office of the Superintendent at Dayton, Ohio. As of mid-1971, Claimants assert that third trick Yardmasters commenced performing clerical functions in this regard.

Carrier denies that Yardmasters were preparing and delivering said reports. Rather, it states that Clerks continued to make all necessary track checks and enter tonnage onto the appropriate form. Although the Yardmasters made use of tonnage figures, they did so in connection with their normal duties, and they had not altered the procedures in use for "well over 25 years."

The "wires" or "reports" referred to by the Employees, which were "discontinued" on January 3, 1972 were not, according to Carrier, a product of performing clerical functions, but, rather, were merely the means by which the Yardmaster had forwarded status reports each morning for more than a quarter of a century, and the information contained therein was assimilated from documents furnished by clerical forces.

Although the Employees assert that Carrier's action herein is directly akin to that action which was proscribed by Award 18804, we are of the view that our Award 20290 controls. Here, as there, we find no evidence that Yardmasters physically checked tracks or performed clerical duties.

Carrier's final "declining decision" was apparently issued in November of 1972. The case was submitted here on January 30, 1975. Yet, in the intervening period, we find no reference by Claimant to Carrier's assertion of the "25 year" practice:

"In order to prevail the moving party must establish its claim by a preponderance of probative evidence...." (Award 20290)

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 claim be 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 31st day of August 1977.