

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21789
Docket Number CL-21671

James F. Scearce, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employees
(
(Norfolk and Western Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood,
GL-8127, that:

1. Carrier violated and continues to violate the Agreement between the parties when on February 17, 1974, a new position of Assistant Office Manager was created as a fully excepted position with clerical duties assigned, which had previously been performed by clerical employes at Buffalo, New York.

2. Carrier shall pay A. Valente eight (8) hours punitive rate for February 17, 1974, and each Sunday thereafter until July 1, 1975, when the work was returned to contract employes.

OPINION OF BOARD: This claim arises out of the reassignment by Carrier of a supervisory position from the night shift (12 Midnight to 8:00 A.M.) to the day shift (8:00 A.M. to 4:00 P.M.). Petitioner alleges that on the day shift the supervisor performed certain duties such as tracing cars, making reports, general office duties, etc., which should have been performed by clerical employes.

Our review of the record submitted to this Board by petitioner reveals that it contains little more than unsubstantiated allegations and assertions. Petitioner has offered no proof that any of the items of work were, in fact, performed by the supervisory employe. The Carrier, on the other hand, denied that the supervisory employe performed any service which accrued exclusively to clerical employes. Petitioner, in its abbreviated rebuttal to the Board did nothing to refute the Carrier's assertions of fact thereby leaving material factual statements uncontroverted and undenied.

Given the paucity of evidence brought forth by petitioner on the essential points of its claim, we have no alternative but to conclude

that the record does not support its claim. In order to prevail in this case, petitioner was required to establish its claim by a preponderance of probative evidence. This they have not done. We must dismiss the claim for failure of proof.

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 Agreement was not violated.

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 18th day of November 1977.

