

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21806
Docket Number CL-21436

Joseph A. Sickles, Referee

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

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood,
GL-7967, that:

1. Carrier violated the Agreement between the parties when on February 18, 1974, Carrier official, Trainmaster W. C. Weaver was used to transport Conductor G. Klinglesmith and crew from W-5 Pocket to the Tin Shanty in violation of Rules 1 and 34 (d) of the Clerks' Agreement.

2. Carrier shall compensate Clerk J. L. Perrine for a holiday call of five hours and twenty minutes at punitive rate in accordance with Rule 35 (a).

OPINION OF BOARD: Claimant (a mail-janitor), was assigned to a 7:45 a.m. to 3:45 p.m. position, Monday through Friday. On "Presidents' Day" 1974, his position was blanked and he received one day of pay at the pro rata rate.

At Noon, on the claim date, a Trainmaster transported a crew ✓
"from W-5 Pocket to the Tin Shanty."

The Claimant asserts that the work of transporting crews is assigned to him and comprises about 50% of his regular duties. Carrier denies that crew transportation is exclusively Clerks' work and asserts that Supervisors have performed said tasks at Bellevue and at other terminals.

Rule 34(d) refers to work which will be performed on a holiday X
- which is not a part of any assignment - by the "regular employee" who is defined as being the "regular employee entitled to the work under the rules of this agreement."

Carrier asserted on the property that work of crew driving "is not now nor has it ever been, work belonging exclusively to members of the clerical craft," and it specified other Company personnel (Supervisors, Trainmasters, Foremen, General Yardmasters, etc.) and taxi

cabs have performed the function in Company-owned or private vehicles at this - and other - terminal(s). Moreover, Carrier suggests that other clerical employees who also transport crew members were on duty on the claim date.

Thus, according to Carrier, we are confronted with a situation wherein a Claimant transports crews - as part of his regularly assigned duties - as do other clerical personnel on the same shift, and as do Supervisors. Accordingly, there are four individuals to choose from.

The Claimant urges that we ignore any assertion that "exclusivity" is the proper "test" to determine the employee who should have performed the work. Rather, it is urged that Rule 34(d) controls. But, as we read that rule, we are still required to identify the "regular employee entitled to the work under the agreement." The Employee relies upon Award No. 20556, concerning these parties, as precedent.

Our concern in this case stems from the fact that various assertions concerning the "driver" duties of other Clerical employees appear in certain presentations to this Board, but we are not able to find that they were perfected and/or advanced while the matter was pursued on the property. The single paragraph in the April 29, 1974 letter, "Your above claim is hereby declined as records indicate other regular assigned messengers were on duty and available to perform such service as you allege on this date," was neither repeated nor enlarged upon during the ensuing 15 months before the dispute was submitted to this Board and does not appear to be the basis for the declination on the property. Thus, under the long-established rules of this Board, we are unable to consider the case in the posture ascribed to it by Carrier. Under those circumstances, the dictates of Award 20556 are more closely akin to this dispute than a different type of handling below might have produced.

Much has been written concerning the wisdom of adhering to prior Awards between the same parties, when the same issues are involved. Quite candidly, we are compelled to note that Award No. 20556 may have, to some extent, understated the complexities of the issues involved in this type of a case. While we do not necessarily assert that the final result would be the same or different had we considered the dispute in the first instance - unaided by extrinsic assistance - nonetheless, we cannot conclude that Award 20556 is palpably erroneous.

Thus, for the reasons expressed and based on the factual posture of this record, we sustain the claim.

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 Agreement was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 30th day of November 1977.