

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21850
Docket Number CL-21610

George S. Roukis, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employees
(
(Consolidated Rail Corporation
((Former Lehigh Valley Railroad Company)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood,
GL-8082, that:

1. Carrier violated the Agreement between the parties, particularly Rule 1, Rule 3(e), and Rule 9(c), among others, when on August 20, 1974 it required George R. White to suspend work from his regularly assigned position as Clerk - Desk #941 to fill a vacancy on position Clerk - Desk #453 and required and/or permitted E. Zadravacs, Supervisor and W. Bogardus, Assistant Supervisor - Freight Accounting, to perform work and duties of Clerk - Desk #941 during his absence.

2. Carrier shall, as a result, compensate Claimant George R. White, regular incumbent of Clerk - Desk #941, one day's pay at the punitive rate of his assignment.

Committee Docket 74-28

OPINION OF BOARD: The critical question posed by this case is whether or not the work claimant asserts was performed by the supervisor and assistant supervisor was exclusively his assigned responsibility.

This Division has consistently required in contested scope rule violation cases that petitioners must carry the burden of demonstrating work exclusivity. Custom, history and practice are the substantiating and verifiable determinants. See Awards 18243 and 21091. While a presumption of exclusivity on its face could reasonably be posed in this situation, claimant was under a stronger litmus test requirement to prove that the work of sorting Forms ADV-1614 in proper sequence for processing was exclusively the province of his position. Merely asserting that the aforesaid task is subsumed under the interpretative definition of "other similar work" will not suffice.

This Board is mindful of the weight of Third Division, National Railroad Adjustment Board, decisional law "that work once assigned by a carrier to employees within the collective bargaining unit thereby becomes vested in employees within the unit and may not be removed except by agreement between the parties." Third Division Award 20839.

This principle is a peremptory given. But where as in this case a gray area of work jurisdictional doubt surrounds the claimed exclusivity, a more explicit showing of custom and practice is needed.

Absent this specificity, the Board must reject the claim in its entirety.

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

The Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A.W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 18th day of January 1978.