

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21978
Docket Number CL-21575

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employees
(
(Kentucky & Indiana Terminal Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood,
GL-8117, that:

1. Carrier violated the terms, spirit, intent, and rules of the current working Agreement, particularly Rules 1, 18(f), 52, 53, 54, when effective November 1, 1974 the position of Storehouse Foreman was abolished with some of the remaining work of this position being absorbed by an employee not covered by the Agreement while other duties of the position were assigned to positions having lower rates of pay.

2. Carrier shall, because of the violations cited in (1) above, compensate Mr. L. R. Thompson, his successor and/or relief, in addition to his regular rate of pay, \$3.02 per day for each day, Monday through Friday, November 1, 1974.

3. This is a continuing claim for each day, Monday through Friday, beginning November 1, 1974.

OPINION OF BOARD: This dispute involves the disposition of work after the abolishment of the Storehouse Foreman's position, upon the incumbent's retirement.

Initially, Carrier raises a jurisdictional argument asserting that the Organization had an obligation to engage in certain negotiations before bringing this dispute to this Board. We do not find merit in this contention; the dispute herein was progressed in conformity with the Railway Labor Act, as amended.

Petitioner alleges that the work of the Foreman remained after his retirement and was performed by Claimant, or other positions having lower rates of pay as well as by an employee not covered by the Agreement. The theory of the case is well argued by Petitioner, including a host of precedent awards dealing with like problems. The only difficulty is that the factual basis for the Claim was not established on the property.

A careful examination of the record of the dispute indicates that there were four specific allegations with respect to function made by Petitioner during the processing of the Claim: that there were supervisory functions remaining after the retirement; that Claimant sat at the desk of the former Foreman; that Claimant answered the telephone which had been answered by the Foreman previously; and Claimant checked in material and placed a stamp on invoices. In support of its factual assertions, Petitioner submitted, as the most relevant evidence, a statement from Claimant which merely asserted that he had assumed all of the remaining duties of the Storehouse Foreman. There is no delineation of any specific functions. Carrier asserts that Claimant did not assume any supervisory functions and that the remaining supervision was continued (as in the past) directly by the Assistant Manager of the Department, who had exercised such supervision previously through the Foreman. Carrier notes that there were now only three employees involved in the Storehouse, including Claimant. It is apparent that sitting at a desk and answering a telephone is not work reserved to a supervisory position, and had not been so reserved here, although it was acknowledged that Claimant did indeed sit at the Foreman's desk. With respect to checking in material and placing a stamp on invoices, Carrier asserted, without rebuttal, that the entire stores personnel verified material received and placed stamps on invoices to that effect.

It must be concluded that the record contains substantial argument and allegation but is devoid of specific evidence to prove that the Storehouse Foreman's duties continued to exist as alleged by Petitioner. (See Award 4992.) The Claim must be denied.

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.

Award Number 21978
Docket Number CL-21575

Page 3

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A.W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 31st day of March 1978.