

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21988
Docket Number CL-21846

John P. Mead, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employees
(
(Kansas City Terminal Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-8226) that:

(1) The Carrier violated the Agreement on the dates of January 30, February 13 and February 24, and February 26, 1975 when it required and/or permitted officials and employees of another craft to perform work coming under the Scope of the Clerks Agreement.

(2) The Carrier be required to compensate Yard Clerks D. L. Maheny for one (1) hour at the overtime rate for January 30 and February 13, 1975; J. Economou for one (1) hour at the overtime rate for February 24, 1975 and E. L. Vanderpool for one (1) hour at the overtime rate for February 26, 1975.

OPINION OF BOARD: On the three claim dates, Carrier officers spent brief periods of time performing work to assist Claimants in preparation of various reports needed for the turnover of the yard office and yard to the next shift. On February 13, this work consisted of assisting Clerk Maheny with certain yard reports, on February 24, it consisted of walking certain tracks in the yard for purposes of making a yard check, and, on February 26, it consisted of assisting Clerk Vanderpool in the preparation of certain clerical reports.

Carrier argues that the assistance given here was permissible under the findings of Third Division Award 17942, which, in relevant part, held:

"Claimant in this case was the regularly assigned incumbent of the position in question with all of its attendant duties. On his particular rest day, the relief man assumed the duties of the position, but because of his unfamiliarity with such duties,

"required some assistance and guidance from Carrier's supervisor. The Organization avers that the functions performed by the Supervisor came within the purview of the Clerk's Agreement.

A review of the record convinces us that there was no usurpation of clerical duties by the Supervisor. A Clerk was on duty and under pay, but evidently needed some guidance to fulfill his assignment. This was essentially what he received. We find no violation. We will deny the claim."

On the other hand, the Petitioner argues that the acts here in dispute violated the scope rule of their agreement, and particularly Paragraph (b) thereof, reading:

"(b) Positions within the scope of this Agreement belong to the employees covered thereby and nothing in this Agreement shall be construed to permit the removal of positions from the application of these rules except in the manner provided in Rule 60."

Petitioner also cites Rule 41 of the Agreement, Authorizing Overtime, which reads in pertinent part:

"(b) Where casual daily overtime is authorized and the work attaches to a specific regular assigned position, the regular incumbent shall be assigned if available. If not available the overtime will be assigned on a seniority basis to a qualified employe on the same shift. This paragraph applies to such positions as stenographer, timekeeper, cashier, checkman, demurrage clerk, yard clerk, etc. having specific assignments" (underscoring supplied).

From a review of the record, we are satisfied that the work here in question, i.e., preparing switchlists and walking tracks for the purpose of preparing yard checks, is work normally performed by clerks. In our Award 21382, involving similar rules and similar facts, we held:

"However, a perusal of the record indicates that yardmasters did indeed prepare handwritten switch lists as well as make significant additions to machine prepared lists, in addition to their normal functions as indicated above. Since it is quite clear that all additions to switch lists should be prepared by clerks, as well as their initial preparation, these actions by the yardmasters constituted a prima facie violation of the agreement."

This case is clearly distinguishable from the facts and findings in Third Division Award 17942, supra. First, the claimants in this case were regular incumbents of their respective positions, having been awarded their positions by Carrier. Secondly, we find that the work performed by the Carrier's supervisors was more than just assistance and guidance; they clearly and unmistakably performed clerical work which would have otherwise been performed by Claimants.

Given all the circumstances of this case, we conclude the performance of work by supervisors intruded on rights reserved to Claimants by the agreement.

The claim seeks one hour for each of the Claimants, representative of time they would have worked and been compensated for had this violation not occurred. Carrier states, and it is not refuted, that the total time involved in the three claims did not exceed one hour. Based on the foregoing, we find that each of the Claimants should be compensated thirty (30) minutes at the pro rata rate.

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 violated.

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Claim sustained in accordance with opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulos
Executive Secretary

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

