

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22077
Docket Number CL-21868

Don Hamilton, Referee

(Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employees
(
PARTIES TO DISPUTE: (Elgin, Joliet and Eastern Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-8279) that:

1. The Carrier violated the effective Clerks' Agreement when it required and/or permitted an employee outside the scope of the Agreement to perform work reserved exclusively for employees covered thereby;

2. The Carrier shall now compensate Clerk A. J. Tkach for eight (8) hours' pay at the pro rata rate of an Input/Output Technician position for each of dates March 5, 10, 11, 12, 17, 18, 19, 24, 25, 26, 31, April 1, 2, 8 and 9, 1975;

3. The Carrier shall now further compensate Clerk A. J. Tkach for eight (8) hours' pay at the time and one-half rate of an Input/Output Technician position for each of dates March 6, 7, 13, 14, 20, 21, 27, April 3, 4, 7, 10 and 11, 1975.

OPINION OF BOARD: The Organization alleges that the Carrier violated the Scope Rule of the Agreement when it permitted supervisory employees to perform work involved in the operation of tele-processing devices used in the Car Control Program.

The Carrier first asserts that this claim is based upon a specific occurrence and is barred because it was not filed within 60 days of the date of the occurrence. Both parties have argued and briefed this point extensively and it is held that the claim is a continuing claim and one which was properly filed. Recovery of damages, however, is limited to 60 days prior to the actual date of filing.

These parties presented a very similar claim to Referee Dana E. Eischen which resulted in Award No. 21050. The Referee in that case made complete and extensive findings of fact and the Board adopted a very

well reasoned opinion. We find no justification in the instant case which would require us not to follow the decision of Award 21050 as it relates to the merits of the case.

However, in regard to the question of damages, Referee Eischen said:

"The work in question was performed on Claimant's rest day and the measure of damages sought herein was not contested by Carrier and appears appropriate in the circumstances."

In the instant case, the Carrier has raised objections in regard to the damages sought to be recovered.

The Carrier argues that the Claimants were fully employed and that if the work in question had been assigned to them, it would have been completed during their regular tour of duty. It is further argued by the Carrier that the work performed by the supervisors took no more than 35 minutes per day and so there is no basis for awarding 8 hours additional compensation to Claimants.

This is not a new question for the Board or for the Courts. Reparations for work lost even though Claimants were simultaneously employed are well recognized.

In the instant case, the Organization seeks a full 8 hours per day compensation as reparation for work lost. We are not inclined to accept that theory.

We believe that a more appropriate formula for reparations for work lost in this case would be to apply the theory of the Call Rule and we, therefore, hold that the Claimants should be compensated three hours for each two hours work or less performed each shift by the supervisory personnel in the instant case.

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.

A W A R D

Claim sustained as per Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulos
Executive Secretary

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

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

INTERPRETATION NO. 1 TO AWARD NO. 22077

DOCKET NO. CL-21868

NAME OF ORGANIZATION: Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees

NAME OF CARRIER: Elgin, Joliet and Eastern Railway Company

Upon application of the representatives of the Employees involved in the above Award, that this Division interpret the same in light of the dispute between the parties as to the meaning and application, as provided for in Section 3, First (m) of the Railway Labor Act, as approved June 21, 1934, the following interpretation is made:

The Carrier has complied with the order of this Board except that it has not paid a call on certain Mondays in the claim period. The contentions raised by the Carrier in denying the compensation for March 10, 17, 24, 31, 1975 and April 7, 1975 were not raised on the property in the initial handling of this claim. The reasons advanced by the Carrier for paying the claim, except for these specified days, were raised for the first time after the Award was adopted by this Board. Therefore, the reasons advanced by the Carrier are rejected as not being timely raised and the Carrier shall now compensate the Grievant, pursuant to the Call Rule for the dates set forth above.

Referee Don Hamilton, who sat with the Division as a neutral member when Award No. 22077 was adopted, also participated with the Division in making this interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 28th day of February 1979.