

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22762
Docket Number CL-22841

Martin F. Scheinman, Referee

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

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-8724) that:

1. The Carrier violated the effective Clerks' Agreement when on December 28, 1977, and January 16, 1978, it required and/or permitted an employee not covered by the scope of the Agreement to perform the work of pricing stores tickets, work reserved to employees covered by the Agreement;

2. The Carrier shall now compensate Clerk Francis J. Volin for eight (8) hours' pay at the time and one-half rate of his position for each of dates December 28, 1977, and January 16, 1978.

OPINION OF BOARD: On the dates in question - December 28, 1977 and January 16, 1978 - petitioner alleges that Carrier utilized a supervisory employee, not covered by the Scope of the Applicable Rules Agreement, to perform work (pricing of Stores Department requisition forms) which properly accrues and should have been performed by a clerical employee.

Carrier defends its denial of these claims on the basis that, first, the supervisory employee was only "auditing" requisition forms and, second, in any event, the work of pricing requisition forms is not the exclusive function of clerks and, therefore, the Scope Rule was not violated. Carrier also argued that certain evidentiary material submitted by petitioner was presented after the on-property discussion in this case had been completed and, as such, is not properly before this Board.

We will dispense with Carrier's procedural contention first.

From the record, it is apparent that during the on-property handling, petitioner in furtherance of its argument requested that Carrier produce the disputed requisition forms which had been handled by the supervisory employee. This request was denied. Subsequent to the formal discussion of the dispute, petitioner acquired and presented to Carrier copies of the disputed forms, which, they allege, supported their contention that the supervisory employee was, in fact, pricing the forms and not merely auditing them. This material was presented to Carrier by letter dated October 3, 1978. Carrier made no response whatsoever to this material. The dispute was listed with this Board on December 8, 1978.

The propriety of this Board's acceptance of material for consideration which had been presented on the property has been adequately addressed by us in Third Division Award No. 20773 where we said:

"*** Any document presented on the property prior to the date of the Notice of Intention to File an Ex Parte Submission (October 16, 1973 in this case) is properly considered by this Board. But, we have noted in prior Awards that the timing of the submission of certain documents may have significant bearing on the credibility, or the weight to be attached, especially if the timing suggests that the other party did not have reasonable opportunity to respond prior to submission to this Board. No such suggestion is involved here because Carrier did not respond."

See also Third Division Award No. 20025.

It is obvious, therefore, that the material presented to Carrier by petitioner on October 3, 1978 is properly a part of this case. Carrier's election to ignore it - or at least to not respond thereto - was done at its own peril.

The Scope Rule here involved is a so-called "positions and work" rule which is not general in nature. In the circumstances present in this case the use of a supervisory employee to perform work covered by the Scope Rule constitutes a violation of the Rules Agreement and we so find.

As to the compensation due, we are unable from the facts of this record to authorize payment of an eight (8) hour day at the time and one-half rate as claimed. Petitioner simply has not proven that the supervisory employe was utilized for an eight (8) hour period. Therefore, we will award a payment of a two (2) hour call at the overtime rate for each of the two (2) dates involved as full, final and complete settlement of this dispute.

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 in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 29th day of February 1980.