

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22800
Docket Number CL-22757

George E. Larney, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employes
(
(Chicago, Milwaukee, St. Paul and Pacific
(Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-8674)
that:

(1) Carrier violated, and continues to violate, the Clerks' Rules Agreement at Marquette, Iowa, when it requires employes outside the Scope to perform work covered by the Scope and application of the Clerks' Rules Agreement.

(2) Carrier shall now be required to compensate the occupant of Operator Position No. 23580 commencing February 8, 1977 for an additional thirty (30) minutes at the time and one-half rate of Position No. 23580 for every Monday and Thursday, and an additional one (1) hour at the time and one-half rate of Position No. 23580 for every Tuesday, Wednesday and Friday, and continuing until August 1, 1977. (Car. File A-3364)

(3) Carrier shall also be required to compensate the occupant of Operator Position 23580 commencing August 1, 1977 for an additional thirty (30) minutes at the time and one-half rate of Position No. 23580 for every Monday and Thursday, and an additional one (1) hour at the time and one-half rate of Position No. 23580 for every Tuesday, Wednesday and Friday and continuing until the violation is corrected; reparation to be determined by a joint check of Carrier's records. (Car. File A-3410)

OPINION OF BOARD: The basic facts in the instant case are not disputed. For many years the work of servicing cabooses, that is, putting supplies thereon, at Marquette Yard, Iowa was performed by a succession of clerk positions covered by the collective bargaining agreement between the parties. According to the Organization, since March of 1945 and for an unspecified number of years prior thereto, the work of servicing cabooses was assigned to Ice Dock Laborer positions. In December of 1971, the last Ice Dock Laborer position at Marquette Yard was abolished and the work of servicing cabooses was transferred to the Yard Clerk positions.

Effective with the close of work on February 8, 1977, Yard Clerk Position No. 25900 was abolished and that portion of the work of servicing cabooses was then transferred to train service employees. This reassignment the Organization contends, removed the work of servicing cabooses from coverage of the Agreement. Apparently due to time claims filed by train service employees protesting having to perform work outside their craft and class, the Carrier next transferred the work of servicing cabooses at Marquette Yard to Roundhouse force employees effective on or about March 1, 1977.

The Organization, believing the work of servicing cabooses to be exclusively reserved to employees of the Clerk craft and class, initiated a claim on behalf of the occupant(s) of Operator Position No. 23580 on April 6, 1977. Said claim is that identified as Number (2) above under the heading Statement of Claim. The claim was advanced by the Organization's General Chairman, Mr. J. R. McPherson and directed to Carrier's Officer, Mr. G. Y. Neu, Assistant Division Manager-Administration, Minnesota Division. Under date of May 24, 1977, Carrier issued a letter to the Organization declining the claim, said letter was signed by the Division Manager, Mr. B. J. McCanna rather than by Mr. Neu.

The Organization takes the position that Carrier committed a fatal procedural error by failing to have Mr. G. Y. Neu, the appropriate Carrier Officer designated to receive claims in the first instance issue the letter of declination within the contractually agreed upon sixty (60) days as provided for under Rule 36, Section 1(a) of the Agreement, effective July 1, 1975. Rule 36 reads in relevant part as follows:

RULE 36 - CLAIMS AND GRIEVANCES

(From Article V of the August 21, 1954 Agreement)

1. All claims or grievances arising on or after January 1, 1955 shall be handled as follows:

(a) All claims or grievances must be presented in writing by or on behalf of the employee involved, to the officer of the Carrier authorized to receive same, within sixty (60) days from the date of the occurrence on which the claim or grievance is based. Should any such claim or grievance be disallowed, the carrier shall, within sixty (60) days from the date same is filed, notify whoever filed the claim or grievance (the employee or his representative) in writing of the reasons for such disallowance. If not so notified, the claim or grievance shall be allowed as presented, but this shall not be considered as a precedent or waiver of the contentions of the Carrier as to other similar claims or grievances.

Carrier refutes argument by the Organization with regard to a Rule 36 violation by contending that the initial claim filed by General Chairman J. R. McPherson was of a vague and indefinite nature. More specifically, Carrier alleges that the initial claim is not a correct nor proper claim in that it was filed on behalf of unnamed Claimants and also is devoid of any reference to a rule and/or agreement violation. Therefore Carrier reasons, since the claim was not a proper one, the subsequent declination issued by it could not have been violative of Rule 36 or for that matter any other rule.

Because the initial claim was ensnared in procedural difficulties, the Organization adopted the stance that as of August 8, 1977, on which date a letter of declination was issued over Mr. Neu's signature, Carrier had ended its liability insofar as the untimely disallowance of the claim but in so doing had also disposed of the claim without regard to the merits. Therefore, the Organization's General Chairman refiled the claim on September 27, 1977, referenced above as Numbers (1) and (3) under the heading, Statement of Claim, this time directed to Mr. M. H. Westerfield, Assistant Division Manager-Administration, Wisconsin Division as Marquette, Iowa had been reassigned from the jurisdiction of the Minnesota Division.

Inasmuch as the same claim is before us on two separate grounds, we shall address the initial claim advanced by the Organization on the procedural question of timeliness and the second claim on the basis of its merit.

With regard to the timeliness issue relative to the initial claim filed by the Organization on April 6, 1977, we note that the parties did, in fact, adopt the principles embodied in Article V of the August 21, 1954 National Agreement as their Agreement Rule 36 cited above. Clearly, the essence of the procedure spelled out in Rule 36 is to make available to the parties a reasonable, equitable and efficient system whereby a resolution of claims or grievances will be effectuated. In seeking to clarify the application of the broad language of Rule 36, the Carrier, acting consonantly with the spirit and intent of Article V of the 1954 National Agreement, issued a letter under date of September 27, 1976, directed to the Organization's General Chairman setting forth which Carrier Officers would receive claims in the first instance and thereafter in the chain of progression in advancing claims or grievances. It seems to us that Carrier was quite explicit in its communication with the Organization, having designated the Assistant Division Manager-Administration as the appropriate Carrier Officer to receive claims or grievances in the first instance. We therefore can reach no other conclusion than to find Carrier in violation of its own directive and to concur with the Organization's position that Carrier Officer Neu and not Carrier Officer McCanna was

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the appropriate Carrier representative to have issued the initial claim declination on behalf of the Carrier. In not having followed its own directive, we find Carrier did, in fact, commit a fatal procedural error by not responding properly in a timely manner. Accordingly, we sustain claim number (2) cited above under the heading Statement of Claim.

As to the second claim, that is, the first claim refiled, we note Carrier alleges the same procedural flaws regarding the vague and indefinite nature as that associated with the initial claim and in addition, asserts the claim lacks in merit and schedule rule and/or agreement support.

After a thorough review of the record, we find the initial claim as well as the refiled claim to be proper in all respects, viewing same as being neither vague or indefinite. Support for our finding on this matter is reflected in our Award 20054, ironically cited by Carrier and which reads in relevant part as follows:

"The Board has thoroughly reviewed precedent Awards cited by the parties, and notes that it is not necessary to specifically name the employee in the claim, if he is so described that he is readily identifiable by the Carrier without further evidence or if his identity is ascertainable without undue difficulty."

In the instant case, the Claimants, to the degree they were identified by the Organization in its Statement of Claim, were not obscure, but were, we believe, readily identifiable by the Carrier. In having to identify the various occupants of Operator Position No. 23580, the Carrier would neither be subjected to a burden of guesswork or engaged in various speculations. On this basis, we believe Petitioner has met the burden here of presenting facts of sufficient specificity as to constitute a valid claim before us for review.

In advancing the claim on its merits, the Organization argues that the work of servicing cabooses is exclusively reserved to employees of the Clerk craft and class.

In situations involving a general Scope Rule such as we have here in the instant case, Petitioner must prove that historically, traditionally, usually and customarily the duty or duties in dispute have been exclusively performed by Clerks throughout Carrier's System. We find that what the Organization has successfully demonstrated here is that servicing cabooses at Carrier's specific location at Marquette Yard in Iowa has been performed by employees of the Clerk craft for over thirty (30) plus years. However,

it is well established that a showing of historical representation of a position at a location within Carrier's System is insufficient to establish exclusive right to that position on a System-wide basis. Furthermore, Carrier has offered substantial proof that servicing of cabooses at various locations on its System has been performed by employees of various crafts and classes among which are: Engineers, Conductors, Car Foremen, Carmen, Ice House Laborers, Track Department employees, Maintenance of Way Employees, Section Foremen, Mechanical Foremen, as well as employees of outside companies. Thus, Carrier has clearly shown that servicing cabooses has not been traditionally and/or historically exclusively reserved to any one craft or class of employees System-wide. In view of this evidence we find Petitioner has failed to prove System-wide exclusivity relative to the performance by clerical employees of servicing cabooses. We therefore deny the Organization's claims numbers (1) and (3) above as set forth under the heading Statement of Claim.

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 to the extent shown in Opinion.

A W A R D

Part (2) sustained. Carrier shall compensate the occupant of Operator Position No. 23580 commencing February 8, 1977 for an additional thirty (30) minutes at the time and one-half (1½) rate of Position No. 23580 for every Monday and Thursday, and an additional one (1) hour at the time and one-half (1½) rate of Position No. 23580 for every Tuesday, Wednesday and Friday, and continuing until August 1, 1977.

Part (1) and (3) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 31st day of March 1980.