

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23217
Docket Number CL-23212

George E. Larney, Referee

PARTIES TO DISPUTE:

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
(
(Chicago, Milwaukee, St. Paul and Pacific Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-8911)
that:

(1) Carrier violated the Clerks' Rules Agreement at Sioux City, Iowa when it utilized employees outside the scope and application of the agreement to assume duties covered under the scope and application of such agreement on June 28, 29, July 22, 25 and 26, 1977.

(2) Carrier shall now be required to compensate employees R. D. Blessing, R. M. Hoberg, P. Weisz, M. Wensel, E. L. Flair, G. T. Malloy and L. DeGroot each an additional eight (8) hours at the time and one-half rate on each of the claim dates listed at the applicable rates; the applicable rates are to be determined by a joint check of Carrier's records.

OPINION OF BOARD: The Organization alleges Carrier violated several rules of the Controlling Agreement, effective July 1, 1975, when on the claim dates in question, it utilized the services of personnel provided by an outside contractor to perform work of loading grain doors and grain car cooperation at its Sioux City, Iowa facility. The Organization asserts the disputed work has historically been performed at this facility under the scope and application of the Clerks' Rules Agreement.

Carrier argues the disputed work is not now nor has it ever been exclusively assigned to and/or performed by employees represented by the Organization. Thus, Carrier asserts, no violation of Agreement Rules obtained when it utilized the services of personnel supplied by an outside contractor to perform the disputed work.

Upon a review of the central issue, we find a preponderance of the evidence supports the Organization's assertion that the disputed work has indeed been performed by members of its Craft at the Carrier's Sioux City, Iowa location. As to Carrier's primary contention that the Organization must prove exclusivity of the disputed work for its position to prevail, we disagree that this principle is applicable in the instant case, referring the parties to what we said in our Third Division Award No. 13236:

"The exclusivity doctrine applies when the issue is whether Carrier has the right to assign certain work to different crafts and classes of its employees - not to outsiders."

In addition to the basic dispute at hand, we note the several minor points at issue which shall be disposed of as follows:

1. As there is no evidence in the record to validate the claim date of June 28, 1977, it shall be dropped from consideration by us in disposing of this case.
2. As there is insufficient evidence in the record to support the number of claimants in whose names this claim was progressed, we rule to make our decision in this case applicable to the senior claimant only, identified by name as E. L. Flair.
3. We find the applicable rate of pay to be the pro rata rate rather than the time and one-half rate as so contended by the Organization.

Based on the foregoing discussion and determinations, the Board directs Carrier to compensate Claimant, E. L. Flair, eight (8) hours pay at the applicable pro rata rate for each of the four (4) claim dates of June 29; July 22; July 25; and July 26, 1977.

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 set forth in the Opinion.

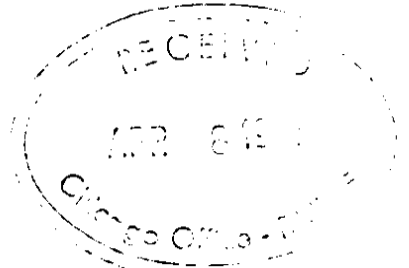
NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulsen

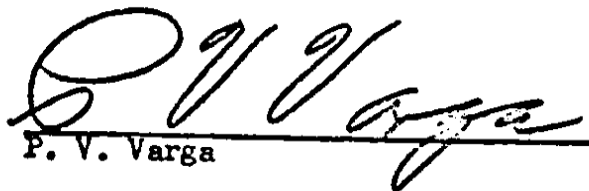
Executive Secretary

Dated at Chicago, Illinois, this 16th day of March 1981.

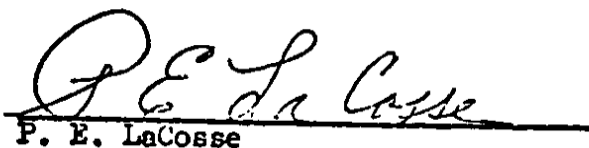


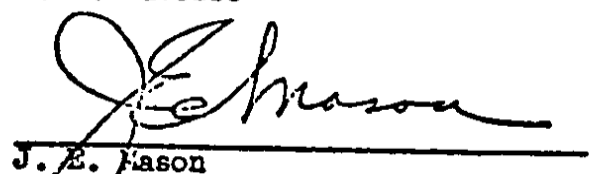
CARRIER MEMBERS' DISSENT
TO
AWARD 23217, DOCKET CL-23212
(Referee Larney)

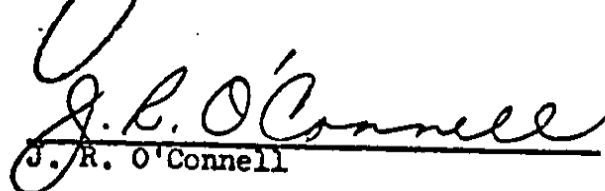
It is evident that the Majority here has misapplied the exclusivity doctrine just as was done in Award 13236 upon which this Award is founded. Compounding error does not make it right. For the same reasons noted in our Dissent to Award 13236, we dissent here.


P. V. Varga


W. F. Euker


P. E. LaCasse


J. E. Mason


J. R. O'Connell