

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23463
Docket Number CL-23050

Martin F. Scheinman, Referee

PARTIES TO DISPUTE:

{ Brotherhood of Railway, Airline and Steamship Clerks,
{ Freight Handlers, Express and Station Employees
{
{ The Chesapeake and Ohio Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-8827) that:

(a) The Carrier violated Rule 1 and others of the Clerks' General Agreement during the hours of 6:30 A.M. and 2:30 P.M. on February 6, 1972; during the hours of 10:30 P.M. February 6, to 6:30 A.M., February 7, 1972, and during the hours from 6:30 A.M. to 2:30 P.M. on February 10, 1972 when they required and allowed Trainmen, another craft and class, to perform messenger duties.

(b) Claimant, Mrs. M. J. Bowling now be allowed eight (8) hours pay at the pro rata rate of \$34.97 per day account the violation which occurred on February 6, 1972 between the hours of 6:30 A.M. and 2:30 P.M.

(c) Claimant J. E. Lisk now be allowed eight (8) hours pay at the pro rata rate of \$34.97 per day account the violation which occurred during the hours of 10:30 P.M. February 6, to 6:30 A.M., February 7, 1972.

(d) Claimant Mrs. T. J. Nye now be allowed eight (8) hours pay at the pro rata rate of \$34.97 per day account the violation which occurred on February 10, 1972 between the hours of 6:30 A.M. to 2:30 P.M.

OPINION OF BOARD: The Organization claims that Carrier violated the Scope Rule, Rule 1, when it allowed Trainmen to perform messenger duties on the following dates: February 6, 1972 between the hours of 6:30 a.m. and 2:30 p.m.; February 6th and 7th, 1972 from 10:30 p.m. to 6:30 a.m.; and 6:30 a.m. to 2:30 p.m. on February 10, 1972. It asks that certain enumerated claimants be compensated for work that they would have performed had Carrier not assigned it to the improper craft.

Carrier, on the other hand, claims that the Organization does not have the exclusive right to perform the duties in question. Therefore, it asserts that no violation occurred.

On February 6, 7 and 10, 1972 during the above-noted times, the pneumatic tube system which normally was used to transport lists between the Pump Yard, the Office, the Towers and other locations was inoperative. Since the pneumatic tube system was not functioning, the Carrier permitted Trainmen to deliver switch lists to the Towers, rather than calling in a clerical employee to perform such tasks.

The Organization and the Carrier recently presented the same underlying issue to this Board (George S. Roukis, Referee) in Docket No. CL-22974. By Award Number 23053, dated November 14, 1980, we denied the grievance and held that the Scope Rule was not violated when Trainmen were used to deliver switch lists to Car Retarder Operators in the Hump Towers at times when the pneumatic tube system was inoperative. We held therein that clerks do not have the exclusive entitlement to perform work pertaining to the pneumatic tubes. Nothing presented here convinces us that our decision there was improper. As such, consistent with the time honored doctrine of stare decisis, we will deny the claim in its entirety.

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 not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:

A. W. Paulsen

Executive Secretary

Dated at Chicago, Illinois, this 8th day of December 1981.

