

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23571  
Docket Number CL-23437

Herbert Fishgold, 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-9019) that:

(1) Carrier violated the Clerks' Rules Agreement at Alberton, Montana in Seniority District No. 6 on July 10 and 11, 1978, when it required an employee not covered under the scope and application of the Clerks' Rules Agreement to assume the duties regularly performed by the occupant of Boardman's Position No. 76950 and failing to call employee M. A. Mjelde to perform such duties associated with Boardman's Position No. 76950.

(2) Carrier shall now be required to compensate employee M. A. Mjelde an additional four (4) hours at the time and one-half rate of Boardman's Position No. 76950 for July 10, 1978 and an additional two (2) hours at the rate of time and one-half of Boardman's Position No. 76950 for July 11, 1978.

OPINION OF BOARD: Claimant was the regularly assigned Boardman at Alberton, Montana in Seniority District No. 6 on the 8:00 P.M. to 5:00 A.M. shift. The claim herein is that on July 10 and 11, 1978, the Carrier allowed or required a Traveling Engineer to assume duties normally performed by the occupant of the Boardman position in violation of Rules 1 (Scope), 9 (Bulletined Positions), and 34 (Notified or Called) of the Clerks' Rules Agreement. More specifically, the claim alleges that the Traveling Engineer did the following:

"7/10/78	11:55 a.m.	allowed Engineer to report back to the Board.
7/10/78	3:00 p.m.	allowed Brakeman to lay off
7/11/78	12:57 p.m.	released Engineer from the Alberton Board "

For this, claimant seeks compensation for an additional four (4) hours at time and one-half at the rate of the Boardmen's position for July 10, 1978, and an additional two (2) hours at the rate of time and one-half for July 11, 1978.

The Organization maintains that answering the phone and marking people up on the Board are normal duties of the operator on duty, and that the Traveling Engineer usurped duties of a position under the scope and application of the Clerks' Rules Agreement.

The Carrier defends its actions by initially maintaining that the Traveling Engineer was acting in a supervisory capacity, in that he was instructing the operator on duty who was handling the Board. However, although the Carrier has never denied that the incidents in question were performed by the Traveling Engineer, it subsequently argued that the Organization's proof was in the form of "mere assertions", citing the statement from the operator on duty saying that the Traveling Engineer "apparently" entered a transaction in the books. This type of evidence, the Carrier contends, fails to meet the burden of proof required of the claimant.

We believe that the record supports the finding that the Traveling Engineer answered the phone and marked the book as indicated by the three entries in the log book. It is clear from the Agreement that he was thus performing routine clerical work under the pretense of acting in a supervisory capacity. As has been held in the Third Division (see, e.g., Award 22303), the intent of the Agreement was to reserve this type of work to this craft. Furthermore, since the Carrier is not denying that the Traveling Engineer in fact made the three entries, but rather that this was incidental to his supervisory function, there is no real dispute as to the occurrence, and thus, the fact that the operator on duty may not have actually seen him take the calls or make the entries, does not require a different conclusion. Therefore, we find that the Agreement was violated by the Traveling Engineer performing the duties of the craft on July 10 and 11, 1978.

Finally, the Carrier contends that the Agreement does not provide for the monetary penalty sought by the Claimant. A review of Third Division Awards indicates that this issue has been raised many times with conflicting points of view; but, it is our conclusion that if the rules are to be effective there must be adequate penalties for violation. Accordingly, we shall affirm the line of Awards that hold that violation of the Agreement requires compensation as reparation for such breach. See, e.g., Award 20311 and Award 17973.

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.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest: Acting Executive Secretary  
National Railroad Adjustment Board

By   
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 10th day of March 1982.