

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23574
Docket Number CL-23776

Herbert Fishgold, Referee

PARTIES TO DISPUTE: { Brotherhood of Railway, Airline and Steamship Clerks,
Freight Handlers, Express and Station Employees
{ Elgin, Joliet and Eastern Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(G-9358) that:

1. Carrier violated the effective Clerks' Agreement when, on May 28, 1979, it required and/or permitted an outsider, not covered by the Agreement to perform janitorial duties reserved for employees covered by the scope of the Agreement and performed by Ms. D. Chyzy, incumbent of Position GT-266 during her regular work week;
2. Carrier shall now compensate Ms. Daisy Chyzy eight (8) hours' pay at the time and one-half rate of Position GT-266 for May 28, 1979.

OPINION OF BOARD: The Carrier maintains facilities in South Chicago, Illinois, primarily to serve the South Works of U. S. Steel Corporation. Included in these facilities is a building known as the Central Ordering Point (C.O.P.) Building, which is leased in part to U. S. Steel and, as a provision of that lease, specified that maintenance and cleaning will be provided by the Carrier. The building is used jointly as office space for U. S. Steel's Transportation Department and for the Carrier's computer input station as well as offices for Carrier officials, and is manned by both U. S. Steel and Carrier employees on a 24-hour per day, seven-day per week basis.

The Claimant is an incumbent of Position GT-266, whose janitorial duties include the C.O.P. Building. Position GT-266 is a six-day position with assigned hours from 7:00 A.M. to 3:00 P.M. and rest days of Saturday and Sunday. May 28, 1979 was a holiday (Memorial Day) and Carrier elected not to work Position GT-266 that day.

Mr. D. Thompson, a supervisor of U. S. Steel Transportation Department, apparently determined that the C.O.P. Building was dirty and required cleaning, and directed a janitor employed by U. S. Steel at another location to sweep the office and empty trash containers. This work was performed on May 28, 1979, beginning at approximately 1:00 P.M.

The Organization claims that Carrier violated Rules 1 (Scope), 42 (Overtime) and 43 (Notified or Called) of the Agreement between the parties by failing to afford Claimant the opportunity to work when duties of her position, which are exclusively reserved for an employee covered by the scope of the Agreement between the parties, was required and was performed by an employee of U. S. Steel on the date claimed.

The Carrier, on its part, maintains that the work was performed by U. S. Steel personnel in offices exclusively used and controlled by U. S. Steel Corporation without any involvement or knowledge by the Carrier. Furthermore, Carrier argues that the Organization did not file a claim until 34 days later, which was too late for the Carrier to have taken any corrective action.

There is no dispute that the work was performed by an employee of U. S. Steel Corporation, and that the work is covered by the scope of the collective bargaining Agreement and is part of the regular assignment of Position GT-266. However, the evidence clearly shows that no Carrier official authorized, permitted or knew of the U. S. Steel employee performing janitorial services on the day in question, nor did the Organization advise the Carrier of this incident on the day in question so that corrective action could have been taken. In addition there was no indication, that this issue occurred other than on the day in question.

Under the particular circumstances herein, where the Carrier had no direct or indirect involvement or knowledge, and noting that it was an isolated occurrence, the Board is of the opinion that the Carrier did not violate the Agreement.

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.

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Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brash - Administrative Assistant

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