

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23859
Docket Number CL-23938

T. Page Sharp, Referee

PARTIES TO DISPUTE: { Brotherhood of Railway, Airline and Steamship Clerks,
 { Freight Handlers, Express and Station Employees
 { Bessemer and Lake Erie Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-9360) that:

1. Carrier violated the effective Clerks' Agreement when, effective April 28, 1979, it converted former seven day positions at Albion, Pennsylvania, into five and six day positions and required employees at another location to perform work normally performed by the regular employee on Saturdays and Sundays.

2. Carrier shall now compensate Clerk K. R. Raymond, and/or his successor or successors in interest, namely, any other employee or employees who have stood in the status as Claimant and as such have been adversely affected, for eight (8) hours' pay at the time and one-half rate for April 29, 1979, and for each and every Sunday thereafter that a like violation occurs, to be determined by a joint check of the Carrier's records.

3. Carrier shall now compensate Clerks A. F. Naples and J. L. Motzing, Jr., and/or their successor or successors in interest, namely, any other employee or employees who have stood in the status as Claimant and as such have been adversely affected, for eight (8) hours' pay at the time and one-half rate for April 28 and 29, 1979, and for each and every Saturday and Sunday thereafter that a like violation occurs, to be determined by a joint check of the Carrier's records.

OPINION OF BOARD: The Carrier maintains facilities at Albion, Pennsylvania. In the past these facilities had been manned by a clerical staff which operated on a twenty-four hour per day, seven day per week schedule. Some of the duties of the clerical staff at this location include inputting and outputting data by means of a cathode ray tube (CRT) concerning the arrival and departure of trains. The Claimants in this case are the three clerks who are the incumbents of the first, second and third tricks. These positions had been furnished with relief on Saturdays and Sundays.

On or about March 31, 1971 the Carrier abolished the relief positions and made the first trick position a six day assignment with a rest day on Saturday. The second and third trick positions were made five day assignments with rest days on Saturday and Sunday.

On April 24, 1979 the Carrier posted a notice which read:

"Subject Weekend Computer Reporting - HF Office

Effective immediately, during weekend operations (Saturdays and Sundays), in which there are turns of no clerical coverage at Shenango, Albion and Conneaut yard offices, HF office will make input to the Q&TC system from existing computer inventory pertaining to various train movements involved.

This is to include initiating of trains, (09) for Drag or Pool crews, forms 10 and 11 building of train consists from track inventories and departures (18) of said trains. Advance consists of trains which you handle should be sent to next work point as determined from work message. Also, consists of trains from Conneaut, Albion or Shenango which you build should be sent to the respective yard printer from which the pickup is being made.

CMD will provide a work message to HF which specifies track to be picked up, number of cars by destination, and all of the work he has laid out for given crew working at point where clerk is not on duty.

When at all possible, CMD should notify what tracks a train is setting off on for crews arriving Albion or Conneaut when HF is required to report arrival to these two areas. This should also include cut numbers for crews making two or more track set-offs within a given yard.

HF office, after arriving trains to Albion or Conneaut should send a 51 track list to the yard printer after reporting the (19) arrival.

CMD should work with yardmaster to coordinate pickups and set-offs of cars at Albion and Conneaut to have adequate information to provide HF.

If there are any questions, please contact me."
(underscoring in original)

This procedure had the effect of transferring the former relief work (with the exception of Sunday for the first trick) to Greenville, Pennsylvania, some forty miles away.

The position of the Organization is that this handling of work by the clerical forces at Greenville is violative of the Rule 4(b) of the Agreement between the parties which comes from the Forty-Hour Week Agreement. This rule reads:

Work on Blanked Rest Days

"(b). Where work is required by the Company to be performed on a day which is not a part of any assignment, it may be performed by an available unassigned employee who will otherwise not have forty (40) hours of work that week; in all other cases by the regular employee."

The Carrier denies any violation of the Agreement if the type of work done by clerks at Albion Yard is done on the weekend by clerks at HF office in Greenville. Its position is that the work has been assigned to these clerks and thus cannot be "work which is not part of any assignment" as proscribed by Rule 4(b).

This Board cannot consider the merits of the alleged contract violation in this case. Payment is claimed for one Claimant for eight hours' pay for April 29, 1979, and for each Sunday thereafter if a violation occurs. The same is true for the other two Claimants for April 28 and 29, 1979 and Saturdays and Sundays thereafter.

The specific claims are based on the assertion of the General Chairman in a March 14, 1980 letter to the Carrier's Director of Labor Relations that eight train movements occurred in Albion Yard on the second and third trick on the day of April 29, 1979. The claim is, however, not based on train movements but is based on inputting and outputting data into a cathode ray tube. The Board has not been furnished any evidence that would establish whether any work of this nature was done at Albion or Greenville. Moreover, even if it had been established that any work was done at one or both of these locations, the Board would consider it necessary that it be furnished with evidence of who did the work and the extent of the work.

The function of the Board is not to seek evidence nor, in the absence of such, to speculate on an interpretation of the Agreement if certain facts were true. Rather, the function of the Board is to consider the evidence presented to it and based upon this evidence, interpret the Agreement in this context to determine whether or not there was a violation.

Neither party has furnished the Board with evidence necessary for decision. However, the burden of proof rests with the Organization to prove all of the elements of its claim. See Awards 20620, 20677, 20943, 21658 and a host of others. This it has not done. Mere assertions are not proof. For example, see Awards 12685, 19306 and 22204.

The Organization confirmed that it had not furnished the necessary evidence when it asked the Board to order a joint check of the Carrier's records to determine violations. It has long been held that the Carrier is not required to make a joint check of its records to help the Organization establish its claim. See, for example, Awards 18447, 16675 and 15394. This is not to say that a joint check is never required. If the only reasonable possibility of discovering evidence which would enable the Board to intelligently interpret the Agreement were through this vehicle, the Board would consider the request. But in this case, if there was work of the nature described being done at HF office,

it would have possibly been done by brothers of the Claimants at such office. Since the Organization represents all employes in this craft and class, it would have been no great task to ascertain if such work were done at HF office and if so who did it.

In its submission the Organization contends that the posting of the notice which apparently transferred the relief work to HF office is per se a violation. The Board will not make declaratory judgments. The claims allege actual violations.

By not furnishing evidence which would allow the Board to interpret the Agreement in light of relevant facts, the Petitioner has failed to carry its burden of proof.

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 Employes involved in this dispute are respectively Carrier and Employes 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: Acting Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant



Dated at Chicago, Illinois, this 28th day of April 1982.