

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23954
Docket Number CL-23795

Martin F. Scheinman, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
(
(Missouri-Kansas-Texas Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9299)
that:

(1) The Missouri-Kansas-Texas Railroad Company violated the current Rules Agreement between the parties, DP-451, including but not limited to Rule 45(c), when on Saturday, June 30, 1979, at Houston, Texas, it required the occupant of EDP Clerk, Position No. 9714, to perform duties assigned to Joint Demurrage Clerk Position No. 10074 on an unassigned day of that Position, and did not call and use Mr. R. J. Rao, the regular assigned employee of Position No. 10074 to perform the work.

(2) Carrier shall compensate Mr. R. J. Rao for a call at the time and one-half rate of Joint Demurrage Clerk Position No. 10074 for Saturday, June 30, 1979, in accordance with Rule 46(b)

OPINION OF BOARD: Claimant, R. J. Rao, is regularly assigned to the Joint Demurrage Clerk Position No. 10074 at the Freight Station in Houston, Texas. The regular work week of Position No. 10074 is Monday through Friday with Saturday and Sunday as rest days.

The Organization claims that Carrier on Saturday, June 30, 1979, required the occupant of the EDP Clerk Position No. 9714 to suspend service on the EDP Clerk Position No. 9714 and prepare and send Constructive Placement Notice on car NAHX 480264 and six other cars of wheat held in Eureka Yard for Cargill, Inc. In the Organization's view, this assignment violated the Agreement because Constructive Placement Notices work is regularly performed by the occupant of the Demurrage Clerk position. It asks that Claimant be compensated for a call at the time and one-half rate of the Joint Demurrage Clerk Position No. 10074.

The primary rules the Employees rely on are Rules 45 and 46.

RULE 45 - OVERTIME

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

RULE 46 - NOTIFIED OR CALLED

"(b) Employees notified or called to perform work on their regular assigned rest days (other than Sunday) shall be allowed a minimum of three (3) hours for two (2) hours' work or less, and if held on duty in excess of two (2) hours, time and one-half time will be allowed on a minute basis."

The Carrier, on the other hand, asserts that it did not violate the Agreement. Its primary contention is that the Organization has failed to establish that the EDP Clerk Position No. 9714 actually performed constructive placement of grain cars on the day in question.

After analyzing the evidence and argument presented, we must conclude that the Organization has failed to introduce sufficient evidence to warrant a sustaining Award. That is, there is simply insufficient evidence to establish that the work was actually performed on June 30, 1979.

We shall dismiss the claim.

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 dismissed.

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 30th day of July 1982.