

44
S.C.P.
NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24056
Docket Number CL-24288

Rodney E. Dennis, 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-9500) that:

(1) Carrier violated the effective Clerks' Agreement when on November 22, 1979 (November 23, 1979 - Thanksgiving Day), December 24, 1979 (December 25, 1979 - Christmas Day) and January 1, 1980, it permitted and/or required employees and/or other persons not covered by the scope of the Clerks' Agreement to perform work exclusively reserved for employees covered thereby.

(2) The Carrier shall now be required to compensate Clerk J. L. Sturges for three (3) hours' pay for each of the following dates: November 23, 1979, December 25, 1979 and January 1, 1980, at the time and one-half rate of the position of Clerk - XB Tower - North Bessemer Yard.

OPINION OF BOARD: This case involves three (3) separate claims which were initiated and handled separately but were combined into one dispute for presentation to our Board. Briefly, the claims all center around the allegation that employees not covered by the BRAC Rules Agreement performed work which should accrue to clerical employees at Carrier's XB Tower at North Bessemer, Pennsylvania.

Both sides have advanced various arguments relative to the application of Scope, Days Work and Overtime, Holidays, Notified or Called for Service on Holidays Rules as well as contentions relative to possible application of the "de minimus" principle and the exclusivity of handling derrails. From our review of the record in this case and after considering all of the contentions of the parties, we are convinced that there is no need to make any decision on the relative arguments of applicable Agreement Rules or principles. In this record there simply is not found the quantum of proof necessary for us to make a rules or principle determination. It is too well settled to require citation of authority, that the moving party in a dispute such as we have here has the burden of proving all essential elements of its claim. (See Awards 20026 - Sickles, 20147 - Lieberman) In this case, that burden has not been met. We must, therefore, deny this 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 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 14th day of December 1982.

