

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24670
Docket Number CL-23454

Herbert Fishgold, Referee

(Brotherhood of Railway, Airline and Steamship Clerks
(Freight Handlers, Express and Station Employees

PARTIES TO DISPUTE:

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(The Detroit, Toledo and Ironton Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9116)
that:

(a) The Carrier violated the Rules Agreement dated May 1, 1966, amended January 1, 1971, particularly Rules 1, 3, 6, 24, and others, when commencing April 1, 1978, non-agreement employees performed clerical duties at Woodhaven Yard and no employees covered by this Agreement were called to perform these duties. The duties performed included checking of tracks, trains, piggyback trailers on hand, as well as furnishing constructive placements to Flat Rock, making piggyback reports, and others. These duties performed by Yardmasters on duty in addition to Marketing Department employees and employees of the contractor employed for piggyback operations at Woodhaven Yard. Joint Inspection by BRAC and DT&I of records pertaining to above claim is requested.

(b) The Carrier now be required to compensate the following employees eight hours' punitive pay per day beginning April 1, 1978, and continuing until these violations are corrected. This is a continuing time claim for seven days per week, eight hours per day for employees:

1. J. H. Green
2. J. E. Navarre
3. H. R. White

OPINION OF BOARD: This case involves basically the same facts and issues as in CL-23027 which was the subject of Award 23382.

The Organization requested that the instant case be held in abeyance and disposed of on the same basis as CL-23027. The Carrier rejected the request, but offered to have the case incorporated with CL-23027. The Organization rejected this offer. The Carrier now alleges that the instant claim is null and void in that CL-23027 dealt with the same issue.

The Board is satisfied that, while the instant case could have been joined with CL-23027, inasmuch as it involves different claimants and dates commencing subsequent to those claimed in CL-23027, the matter is properly before the Board.

The only difference between CL-23027 and the present case are the names, dates and times of the alleged transfer of certain clerical work, formerly performed by clerical employees at Rouge Yard, to Yardmasters at Woodhaven Yard with the incidents herein commencing on April 1, 1978.

As Referee Searce held in relevant part, in Award 23382:

"It is apparent in this case that the Yardmasters at Woodhaven have and may properly continue to perform those 'incidental and necessary' functions which have historically been performed by them. However, the clerical functions relative to the piggyback operations which were 'within the purview of this Agreement' by reason of having been performed by clerical employes at Rouge Yard and on which there was no 'discussion and agreement between the Management and the Local Chairman' prior to their having been transferred and assigned to the Yardmasters at Woodhaven Yard are being performed by the Yardmasters at Woodhaven Yard in violation of this Scope Rule.

As for the allegations relative to the use of the outside contractors, there is no probative evidence in this record to indicate that the outside contractor at Woodhaven Yard is functioning any differently than did the outside contractor at Rouge Yard.

As to the damages issue, we remand this to the parties and direct them to jointly determine on a direct relationship basis the amount of time -on a minute basis- consumed by the Yardmasters at Woodhaven Yard incident to the performance of clerical work of the same nature as formerly performed by clerical employes at Rouge Yard directly related to the piggyback operation only. Payment under this determination is to be made at the pro rata clerical rate.

All other aspects of this dispute are found to be unconvincing or inapplicable and are denied."

For all the above reasons set forth in Award 23382, the Board herein adopts as its decision in the instant matter the conclusions reached and the relief awarded therein.

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 violated.

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Claim disposed of in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 24th day of February, 1984