

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25061  
Docket Number CL-24764

Ida Klaus, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airlines 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 (GL-9677)  
that:

1. Carrier violated the effective Clerks' Agreement when, on September 17, 1981, it required Assistant Chief Yard Clerk Helen Vandiver to suspend the duties of her position to supply a waycar (caboose).

2. Carrier shall now compensate Ms. Vandiver for eight (8) hours' pay at the pro rata rate of her position, GT-55 for September 17, 1981.

OPINION OF BOARD: This claim protests that the Claimant was improperly assigned the task of supplying a caboose (waycar) during her regular tour of duty on September 17, 1981. Violation of Rule 45, "Absorbing Overtime", is alleged. The Rule states: "Employees will not be required to suspend work during regular hours to absorb overtime." Note 2 of the Rule explains the parties' understanding as to the kinds of work which would not be required.

The Claimant occupies Assistant Chief Yard Clerk Position G.T. 55 at Kirk Yard, Gary, Indiana. The bulletined duties of the position are specified as:

"Supervising of yard clerical forces, filling of short term vacancies and maintenance of associated calling records; updating of records for cars in hold tracks; lining of Rip Track bills and performance of miscellaneous clerical duties as directed."

Applicants are required to have "knowledge of all clerical work pertaining to operation of Kirk Yard and of the Clerks' Working Agreement and local calling procedures." As indicated by a recent bulletin, the duties and responsibilities have remained unchanged.

As the incumbent of the position, the Claimant ordinarily performs her work inside the office at Kirk Yard. She is not required to wear any special clothing. Prior to the instance in dispute, she had not been required to supply cabooses or perform other outside work. On September 17, 1981, as directed, she interrupted her regular tour of duty and furnished the caboose with tank water, paper towels, fusees and other supplies. This required her to go into the railroad yard, cross the track, and mount the caboose. The time spent was about 15 minutes.

The Organization contends that the assignment was made in disregard of the categories of prohibited work specified in Note 2 of Rule 45. Applying the Note 2 criteria, the Organization characterizes the work as "hazardous"; as requiring clothing "not ordinarily worn" by the Claimant; and as "foreign to the work" she "ordinarily performs".

The Carrier sees no impropriety in the assignment. It asserts that the challenged duties historically have been routinely performed systemwide by clerical forces, including Assistant Chief Yard Clerks.

Upon careful review of the entire record, the Board concludes that the work in dispute was prohibited under Rule 45 and its explanatory notes. We are persuaded by the weight of the evidence that Position G.T.-55 held by the Claimant was established and regularly performed at Kirk Yard as an essentially office-clerical job in the ordinary sense of the term. This is indicated both by the duties and requirements which are specified in the position bulletin, as well as by those which are omitted from it.

We cannot agree that the bulletin's closing reference to "performance of miscellaneous clerical duties as directed" may reasonably be interpreted in this context and on this record to include by implication duties, such as those in dispute, which are plainly unrelated to the essential character of the position as bulletined and performed, even though those unrelated duties may be covered by the General Scope Rule for the "clerical craft or class". We note particularly, in this respect, that bulletins for other positions in the general yard clerical category at Kirk Yard and elsewhere on this property have clearly specified "waycar supply" or janitorial or other outside tasks. They have done so either as part of the title or as an addition to the conventional commonly recognized clerical duties they describe. It thus reasonably appears that "miscellaneous clerical duties" refers to tasks which are of the same essential character as those enumerated.

Nor do we find convincing evidence of consistent unchallenged systemwide acceptance of the disputed duties even when they are not specified in the bulletin. The practice, if it has existed at all, has not been shown to extend to Kirk Yard or to Position G.T.-55 in particular.

Accordingly, we find that the caboose supply duties the Claimant was directed to perform are "foreign to the work" she "ordinarily performs" and are thus prohibited by Rule 45 and its explanatory notes.

The claim will be sustained to the extent that it alleges a violation of Rule 45. We find merit, however, in the Carrier's objection that the remedial compensation sought in the claim (item 2) is unjustified. The Organization has conceded this point in its submissions to the Board; and it seeks "some penalty". We consider that an additional payment at the rate of time and one half for the time the Claimant was required to spend in complying with the disputed assignment is proper and reasonable compensation in the circumstances. The Carrier's objection to our consideration of the modified claim on grounds of laches cannot be accepted. The modification did not change the substance of the essential violation charged.

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

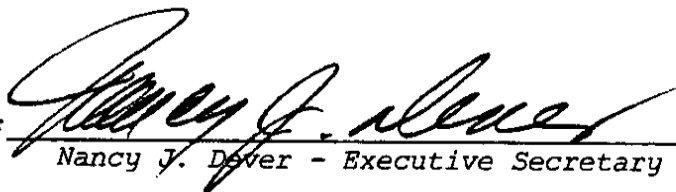
That the Agreement was violated.

A W A R D

Claim sustained 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 4th day of October 1984.

