

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25481
Docket Number CL-24649

Josef P. Sirefman, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
(The Chesapeake and Ohio Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9599) that:

CLAIM NO. 1: (Carrier file CG-12169)

(a) Carrier violated Rules 1, 41 and others of the Clerks' Agreement on December 24, 1976 when they set aside position of Swing Operator, T-13 this date and did then require and allow work be performed by other than the regular incumbent of said position.

(b) Carrier shall now allow R. E. Smith, regular incumbent of Position T-13, eight (8) hours pay at the punitive rate for December 24, 1976 account this violation.

CLAIM NO. 2: (Carrier file CG-12174)

(a) Carrier violated Rules 1, 41 and others of the Clerks' Agreement on January 1, 1977 when they set aside position of Operator, T-16 this date and did then require and allow work be performed by other than the regular incumbent of said position.

(b) Carrier shall now allow D. W. Sutton, regular incumbent of Position T-16, eight (8) hours pay at the punitive rate for January 1, 1977.

CLAIM NO. 3: (Carrier file CG-14620)

(a) The Carrier violated Rules 1, 12, 35 and others of the Clerks' Agreement when it failed to call Mr. L. R. Melton for service at Gladstone, Virginia.

(b) That he now be compensated eight (8) hours at the punitive rate of \$59.66 for January 1, 1979.

OPINION OF BOARD: All three Operator claims arise out of shifts that were blanked in observance of Christmas and New Year Holidays. Clearance forms, train orders and other paper work required by train crews working during those shifts were prepared by Operators on the previous shift. Pursuant to Carrier's directions the train orders were left in the yard office to be picked up by the train crews. The core of the dispute centers on Rule 41 - Handling Train Orders. That Rule provides:

"No employe other than those covered by this Agreement and Train Dispatchers will be permitted to handle train orders at telegraph or telephone offices where an employe covered by this Agreement is employed and is available or can be promptly located, except in an emergency, in which case the employe covered by this Agreement will be paid for the call."

The Organization contends that "handling" under Rule 41 required that the Operators should have been on duty to hand over the train orders to the train crew. The Carrier contends that "handling" does not require the physical presence of the Operators under these circumstances. Both parties made reference to numerous Awards on this subject. However, these Awards do not all deal with identical facts, they do not adopt common reasoning, nor do they arrive at similar outcomes. Therefore, the Board does not find these Awards per se to be dispositive of this issue.

Thus we must turn to the term "to handle". By any definition it contemplates tasks which involve the exercise of discretion, experience, and skill, as well as tasks which can best be described as ministerial. Nevertheless, Carrier determines which combination of tasks is to be completed by the Operator. Here the Carrier determined that the ministerial aspect of handling the train orders would be completed by an Operator when the finished order was placed in the yard office. Once that was done the Operator's work was complete, and no intervening Operator work was performed by the train crew in picking it up.

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:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 23rd day of May 1985.