

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25551

Docket Number CL-24943

George V. Boyle, Referee

PARTIES TO DISPUTE: ( *Brotherhood of Railway, Airline and Steamship Clerks,  
Freight Handlers, Express and Station Employes  
(The Pittsburgh and Lake Erie Railroad Company*

STATEMENT OF CLAIM: *Claim of the System Committee of the Brotherhood  
(GL-9694) that:*

(a) *Carrier had violated the Clerical Rules Agreement effective September 1, 1946 as amended and also the Memorandum of Agreement effective May 13, 1974 of the Centralized Agency Processing System at Pittsburgh, Pa. and outlying Freight Stations.*

(b) *Carrier had assigned Yard Clerk of District No. 27, Mr. Joseph, to perform the interchange of cars to the Union Railroad at Bessemer, Pa., work which is performed daily by District No. 24 clerks. This work was performed on Veterans Day (Holiday) November 11, 1980, the regular clerk at Bessemer (Port Perry) Mr. W. C. See was cut off due to the Holiday.*

(c) *Article 6 of the CAP Agreement states:*

*"It is agreed that Yardmasters and/or Clerks OF ANY OTHER SENIORITY DISTRICT or employees of any other craft will not perform work belonging to District 24 employees and vice versa, etc."*

(d) *Mr. H. C. Joseph of District No. 27 had interchanged seventeen (17) cars to the Union Railroad at Bessemer, Pa., sheet No. 3 dated November 11, 1980.*

(e) *Carrier now compensate Mr. W. C. See the rate of his regular assignment at the punitive rate of pay for the Holiday, Veterans Day on November 11, 1980, when his assignment was cut off due to the Holiday.*

*(P&LE 2-81)*

*(107-9170)*

OPINION OF BOARD: *On a Holiday, Veterans Day, a Yard Clerk of District No. 27 interchanged seventeen (17) cars to the Union Railroad at Bessemer, Pennsylvania. It is undisputed that this is normally work performed by a General Clerk of District No. 24 and that the individual performed this work without direction or authorization.*

*The Employes, relying upon the language of Article 6 of the Agreement, assert that the Agreement was violated and that the regular employe should be compensated at the punitive rate for the Holiday.*

The Carrier argues that the work was not "assigned" as alleged by the Employees but rather was done gratuitously by the District No. 27 Yard Clerk and therefore the Carrier cannot be held responsible. The Carrier argues that to do so would subject them to violations initiated by other Clerks which would result in similar claims over which the Carrier would have no control.

The Board believes the Carrier's position to be fallacious for the following reasons:

- (1) Whether "assigned" or not, the fact remains that the Yard Clerk did perform the work specifically reserved to the General Clerks of District No. 24. It is axiomatic and a well established rule of law that the "principal" is responsible for the acts of his "agents" whether authorized or not.
- (2) The question of "assignment" was not raised on the property by the Carrier. It was introduced in the Carrier's submission, equating the matter as a "veracity issue rather than a scope issue". Inasmuch as numerous awards affirm that new issues may not be raised before the Board which have not been introduced on the property, the Board must bar consideration of this issue.
- (3) The Carrier's response to the initial claim verifies that the District No. 27 Yard Clerk had improperly performed the work stating in D. F. Klein's letter of December 17, 1980, "I had Mr. O'Connell instruct Mr. Joseph that the PLE to UR interchange work at Port Perry is not yard clerk work, and he is not to do this in the future."
- (4) The Carrier's contention that a finding of merit in the claim "would subject the Company to other claims at the whim of the Organization" is specious. In the event that Yard Clerks, contrary to specific instructions, knowingly and willfully perform work outside their jurisdiction subjecting the Employer to damages the Carrier has recourse to disciplinary action to correct this and other derelictions of duty.

For the above reasons the Board finds that the Agreement has been violated and finds the claim valid and sustains it.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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

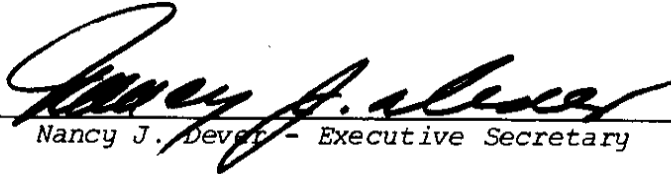
That the Agreement was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 26th day of July 1985.