NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 25576

THIRD DIVISION Docket Number CL-25318

Edward L. Suntrup, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks, (Freight Handlers, Express and Station Employes (
(Elgin, Joliet and Eastern Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9835) that:

1. Carrier violated the effective Clerks' Agreement when, on or about October 20, 1982, it transferred work performed in the Gary, Indiana Storehouse (Seniority District #4) to Joliet, Illinois (Seniority District #3);

2. Carrier shall now compensate Chief Clerk Charles Harding and/or his successor or successors in interest; namely, any other employe or employes who have stood in the status as claimant as incumbent of Position SK-108 three (3) hours' pay at the pro rata rate of Position SK-108 in addition to pay already received, for October 20, 1982, and for each and every day thereafter that a like violation occurs.

OPINION OF BOARD: On November 26, 1982, a pay claim was filed by the Organization on behalf of Chief Clerk C. Harding or his successor or successors in interest. The claim alleged that the Carrier began to remove work from the Gary (Ind.) Store Department on October 20, 1982 and transferred it to the Joliet (Ill.) Store Department. The alleged transfer of work was from Seniority District No. 4 to Seniority District No. 3. It is the contention of the Organization that all requisitions for material for all departments in Gary, Gary Mill Yard, South Chicago and Whiting "must go through the Gary Store Department" and that the typing of purchase orders for the requisitions must remain with the Chief Clerk, SK-108 at the Gary Store Department absent application of the provisions of Rule 5 of the current Agreement. Although there is no evidence in the record that the Chief Clerk, SK-108 lost work over the alleged transfer of work, the claim requests three (3) hours' damages for this incumbent and/or his successors for each work day that the alleged transfer continues in contravention of Rule 5 of the Agreement.

The position of the Carrier is that "...records will show (that) this work has historically been performed by Seniority District No. 1 personnel..." as well as "...by those located in Joliet, Illinois" in addition to those located in Gary. The Carrier provided ten (10) copies of purchase orders to the Organization on the property with respect to this case to substantiate its claim that the type of work in question had been performed, prior to the filing of the claim, by employes working at Joliet. These Exhibits do not show that purchase orders were typed up for Whiting or South Chicago, but they do show purchase orders dated variously in 1982, but prior to October 20, 1982, which were typed up on materials to be shipped to Gary by Clerks located at Joliet.

A review of the record fails to produce an Organization response to the position of the Carrier that personnel in other Seniority Districts, including District No. 3, performed the same type of work at bar. As the moving party, the burden of proof for the instant claim rests with the Organization to prove, by substantial evidence, to the contrary (Third Division Awards 22292, 22760, 22180). Further, this Board upholds the precedent, applicable herein, that unchallenged assertions on the property cannot be considered as fact (Third Division Awards 20283, 23478, 24059). There is insufficient substantial evidence of record to warrant the conclusion that the work in question was not already performed in the Seniority District, prior to the filing of the claim, to which it was allegedly transferred.

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 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 26th day of July 1985.