

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25918
Docket Number CL-24174

Herbert Fishgold, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline 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-9510) that:

1. Carrier violated the effective Clerks' Agreement when, on April 14, 1980, it required and/or permitted an employe not covered by the scope of the Agreement to perform work reserved to employes fully covered thereby;

2. Carrier shall now compensate Mr. William A. Spreitzer for eight (8) hours' pay at the time and one-half rate of a yard clerk position for April 14, 1981."

OPINION OF BOARD: On April 14, 1980, a Supervisor employed by the Carrier but not covered under the applicable Agreement between the Carrier and the Organization carried certain bills and a train list from the Yard office to the Agent's office at Joliet, Illinois. The task took only a matter of a minute or two. Claimant, a covered employe who was within the class of employes eligible to perform the work, but who was not then first in line to be called, filed a claim for eight hours pay at time and one-half. The parties were unable to adjust the claim through the steps of the grievance process, and it was brought before this Board.

The applicable Agreement provides, in relevant part:

"Rule 1 - Scope

"(A) *** Positions or work coming within the scope of this agreement belong to the employes covered thereby and nothing in this agreement shall be construed to permit the removal of positions or work from the application of these rules, nor shall any officer or employe not covered by this agreement be permitted to perform any clerical, office, station or storehouse work which is not incident to his regular duties.

* * *

"(C) Positions and/or work thereof outlined below are generally representative of those within the craft or class: * * * . . . messengers"

The Organization asserts that the Carrier violated the Agreement by allowing the Supervisor to perform the messenger work. The Carrier concedes that messengers have historically performed the work in question, but asserts that other crafts, non-covered employees, and non-employees have also performed such work. Accordingly, the Carrier argues that the Supervisor's performance of the work did not violate the Agreement, since the Organization did not demonstrate its exclusive entitlement to the work. It further asserts that, even if the work belonged to covered employees, it was excusable as de minimus. Finally, the Carrier argues that the claim should be denied because the named Claimant was not the first covered employee eligible for the work and he therefore suffered no loss from the Supervisor's performance of the work.

The Scope Rule here at issue has been held by this Board to be a "positions and work" Rule, rather than a so-called "general" Scope Rule. Accordingly, there is no requirement that the Organization demonstrate that covered employees have historically performed the work on an exclusive basis. See, e.g., Third Division Awards 21382 ("We have held in the past that under Rules such as [the rule at issue] all work being performed under the Clerk's Agreement is preserved to the Organization until it is negotiated out [citing other awards]."); 21581 ("The scope rule under which this claim arose [virtually identical to that at issue in the instant claim] is not a general scope rule and our awards holding to a proof requirement of exclusivity therefore do not apply. [citing and quoting prior awards]"); and 22762.

The applicable Scope Rule prohibits performance of covered work by a non-unit employee unless it is performed "incident to" the regular duties of that employee. The regular duties of the Supervisor who performed the messenger work were to supervise; his regular duties did not include performance of production work. See Third Division Award 12773, in which the Carrier asserted that an Assistant Supervisor of the same classification as the Supervisor who performed the work in the instant case did not perform covered productive work, but, rather, supervised the work of other employees. The Board concludes that, in the context of the present case, for work to be considered "incident to" regular duties would require, at least, that the protected work be directly related or performed in accompaniment to the Supervisor's regular duties. The record in the case indicates no such relationship; it appears that the delivery of the documents was the purpose of the Supervisor's trip. The messenger work he performed cannot, under such circumstances, be held to be "incident to" his regular duties. Accordingly, the Board concludes that, under the applicable Scope Rule, the work was reserved to the Organization and that its performance by a non-covered employee violated the Agreement.

The Carrier's contention that the work performed was excusable as "de minimus" must fail in the absence of support in the Agreement. The Organization is entitled, consistent with numerous Third Division awards, to protect its jurisdiction against encroachments, however small; positions and work may be made up of many small duties and tasks, which are susceptible to erosion and entitled to protection.

With respect to the appropriateness of Claimant to assert the violation, the Organization concedes that he was not the employee who would have been first eligible for call at the time of the Carrier's violation, but argues that he would be eligible under Step Six of the Call Rule in the Carrier's failure to call any other employee under the first five steps. It is undisputed that no other claim has been filed covering the work or time in question. Under such circumstances, the Board believes that the Organization should be given reasonable latitude to progress a claim to protect the integrity of the Agreement, so long as the Claimant is within the class entitled to perform the work and so long as it does not assert inconsistent claims for the same violation or time period.

With respect to the amount of the Claim, the Board concludes that the Organization's claim for eight hours of pay for the incident at time and one-half is excessive. Had the Carrier utilized the procedure under the Call Rule (Rule 43) of the Agreement, the employee called would have been entitled to pay for two hours of work at time and one-half. Since only one incident, conceded by the Organization to have been of short duration, is at issue in this Claim, an award of two hours of pay at the call-in rate satisfies the Carrier's obligation under the Agreement and is consistent with Board precedent. See, e.g., Third Division Award 22762.

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.

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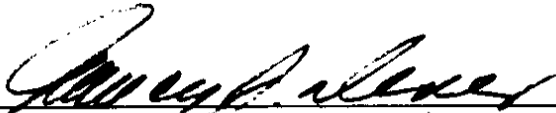
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Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 26th day of February 1986.

