

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25975

Docket Number CL-25805

Marty E. Zusman, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees

PARTIES TO DISPUTE: (

(Southern Pacific Transportation Company (Western Lines)

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood
(GL-9889) that:

(a) The Southern Pacific Transportation Company violated the current Clerk's Agreement when, starting January 1, 1980, it permitted Company Supervisors and various Shop Craft and Signal Department employees to perform certain clerical work that previously had been performed by the occupants of various clerical positions eliminated or transferred by reason of Carrier's September 21, 1979 Abolishment Notice (Notice No. 993.)

(b) The Southern Pacific Transportation Company shall now be required to pay Ms. J. M. Witmer, Guaranteed Extra Board Clerk, Bakersfield, a day's pay at the rate of \$71.20 per day, plus subsequent increases, for January 1, 2, 3, 4, 7, 8, 9, 10, 11, 14, 15, 16, 17, 18, 21, 22, 23, 24 25, 28, 29, 30, 31, February 1, 4, 5, 6, 7, 8, 11, 12, 13, 14, 15, 18, 1980 and continuing each and every day thereafter that the Carrier permits outsiders to perform work formerly assigned to positions under the Clerk's Agreement.

(c) The Southern Pacific Transportation Company shall also return the work diverted from under the Clerk's Agreement and hereafter have it properly performed and assigned to employees working under the Clerk's Agreement."

OPINION OF BOARD: Claim before the Board is that Carrier has violated the Scope Rule of the Agreement. The Scope Rule on this property is a specific positions and work Rule that restrains Carrier from removing work belonging to the Clerks by Agreement and shifting such work to non-clerk employees. The Claim that Carrier had shifted Clerk's work covered by the Scope of the Agreement to outsiders was made by the Organization in a letter dated February 18, 1980. Such Claim was denied by the Carrier and appealed by the Organization on property to the Highest Carrier Officer designated to receive appeals without resolution. As such it was submitted to this Board for a ruling.

In the instant case there are numerous issues before this Board for consideration including the Statement of Claim before the Board, the Claim as it evolved on property, the merits and remedy requested. A careful and complete review of all of the issues suggests that they are best resolved by turning to the merits of the Claim which, in conclusion, will resolve all others.

This Board notes that many facts, lines of argument, exhibits and statements presented in the Ex Parte Submissions do not have solid grounding as having been firmly presented, discussed and handled on property. Such failure in the handling of the dispute on the property is fatal to a consideration by this Board. After a careful review we must rule as inadmissible Organization Exhibits A and H. While such evidence may help substantiate the Claim, these exhibits were not handled on the property and are therefore not properly before this Board. This position is a firmly established position of the Board, codified by Circular No. 1 and consistent with numerous Awards in this Division. (Third Division Awards 20841, 21463, 22054.)

With respect to the merits of the Claim as handled on property, the Organization has failed to sustain its burden of proof. Specifically, this Board cannot find sufficient probative evidence to establish the fact that Clerk Witmer was doing specific work which was then given over to other Crafts. We note that to find such specific information to sustain the burden, we search the record on property for evidentiary support in line with the reasoning set forth in Public Law Board 3051, Award No. 8 which states in pertinent part:

"in order to determine if a violation . . . has occurred, this Board must be provided with evidence to establish at least the following points: 1) the amount and type of the disputed work performed by Agreement-covered employees at the location . . . ; 2) the amount and type of disputed work, if any, which Agreement-covered employees were performing at the location after the alleged violation; 3) the amount and type of the disputed work, if any, performed by strangers to the Agreement . . . ; and 4) the amount and type of disputed work, if any, performed by strangers to the Agreement after the alleged violation."

A careful review of the record as handled on property fails to establish the substantive evidence to show both before and after the date of the alleged violation the specific work done by Clerk Witmer and the transfer of said work to Messrs. McDonald, Leist and McCown or others. It does not establish the facts of a Carrier violation and, as such, this Board must deny the Claim.

FINDINGS: The Third Division of the Adjustment Board, 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

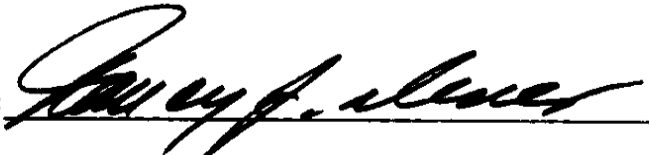
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:

A handwritten signature in cursive script, appearing to read "Nancy J. Dever", is written over a horizontal line.

Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 14th day of March 1986.