NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 26452
THIRD DIVISION Docket Number CL-26179

Eckehard Muessig, 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-9987) that:

1. Carrier violated the effective Clerks' Agreement when on certain dates in February and March 1984, it required and or permitted employes not covered by such agreement to perform work reserved to employes covered thereby;

2. Carrier shall now compensate Clerk S. T. Galka for three (3) hours' pay at the time and one-half rate of his position for each of dates February 25, 28, March 4, 8, 9, 12, 14 and 15, 1984."

OPINION OF BOARD: The dispute leading to this Claim is essentially a Scope Rule matter.

The Organization claims that employes not covered by the Scope Rule issued and received materials from the Carrier's Storehouse during weekends or after the normal tour of duty when no Storehouse employes were on duty. It also argues that the employes involved in the issuing of materials at the time and on the date specified in its Claim are not covered by the Scope of the Agreement. It submits that the Scope Rule in question is not a general Rule and that, under the circumstances here, the work at issue is reserved to the Clerks.

Fundamental to the Carrier's rebuttal of this Claim, it contends that the Organization has a heavy burden of proving entitlement to the work. It essentially argues that the work disputed here consisted of nothing more than a Carrier Police official unlocking a door to the Storehouse. Whatever material was needed was then obtained by the person needing it. This, the Carrier maintains, is of longstanding duration on this property. Moreover, also relying upon the Scope Rule, it also points out that that Rule provides that: "any officer or employe not covered by this agreement [shall] be permitted to perform. . . storehouse work which is. . . incident to his regular duties."

At the outset, the Board does note that the Organization has introduced materials, particularly Exhibit A, which were not presented on the property. Therefore, these materials will not be considered by this Board.

Basic to our determination in this matter is our finding that the Scope Rule is not a general Rule. In this respect, this Board again must associate itself with the position announced in previous Awards involving the same parties and the same Rule. Here, we adopt Third Division Award 25918 which held that the Rule at issue is not a general Rule.

Turning to the work that was allegedly performed by non-unit employes, it is apparent that the Police Officers were the persons who provided entry into the Storehouse "so [that] authorized employes could obtain access to material needed to carry out their assigned duties." While again there are a number of ramifications present in this Claim, the Carrier, in its letter of June 19, 1984, to the General Chairman confirms that the work at issue is handled by Storehouse employes when they are on duty. Given our holding that the Scope Rule is not general, we find that the work herein claimed belongs to the Clerks' craft.

With respect to the past practice arguments progressed by the Carrier, we believe the record generally supports the Carrier's assertions. However, as held numerous times in Awards by this Division, past practices that are incompatible with Agreement provisions do not prevent future claims.

Turning to Part 2 of the Claim concerning compensation, the Board again acknowledges that a breach of major Rules, such as in this case, is a most serious matter. Accordingly, while we recognize and have given weight to the forceful arguments by the Carrier Advocate before this Board, we sustain Part 2 of the Claim at the straight time rate.

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 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 violated.

A W A R D

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 24th day of August 1987.