

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26729
Docket Number CL-26527

Irwin M. Lieberman, 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-10037) that:

1. Carrier violated the effective Clerks' Agreement when, on September 23 and October 1, 1984, it required and/or permitted employees not covered by such agreement to perform work reserved to employees covered thereby;
2. Carrier shall now compensate Clerk J. Roberts for eight (8) hours' pay at the time and one-half rate of Position SK-108 for each of dates September 23 and October 1, 1984."

OPINION OF BOARD: As Third Party In Interest, Allied Services Division/BRAC, was advised of the pendency of this dispute, but chose not to file a Submission with the Division.

This dispute deals with the question of employees not covered by the Scope Rule of the Agreement, namely Carrier Police Officials, allegedly performing work covered by the Rule. The Organization insists that the Police Officers opened the storehouse, received certain empty gas tanks and issued full tanks to employees of the Maintenance of Way Department on two Sundays when no storehouse employees were on duty. This dispute is totally identical with that considered by this Board in Third Division Award 26452 except for the named Claimant, dates and amount of compensation claimed.

Normally the earlier pilot award would be controlling under well established and properly accepted principles. However in this dispute there is a different problem: the facts. Here, the Organization avers that certain equipment was issued by the Police Officers and other material received by them, in addition to their unlocking the storehouse door. The Police Officers insist that they have never issued equipment or supplies and Carrier also states that the only activity of the Police was to unlock the doors.

As we view the problem, the type of activity engaged in by the Police is critical to the resolution of the dispute. We concur with the conclusions reached in the earlier Award with respect to the Scope Rule, but it cannot be applied in this dispute: there is an irreconcilable conflict with respect to the facts. A search of the record reveals no evidence whatever in support of the Organization's version of the facts and this Board is unable to resolve such conflicts. The Claim must be dismissed.

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

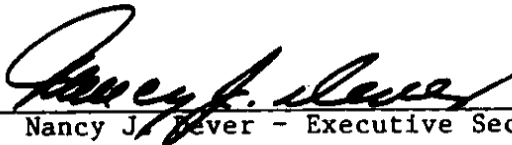
That the Claim must be dismissed.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 11th day of December 1987.

LABOR MEMBER'S DISSENT TO
AWARD NO. 26729, DOCKET CL-26527
(REFEREE LIEBERMAN)

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The Majority Opinion has erred in Its decision to dismiss.

In the second paragraph of the Award it does correctly state the following:

"This dispute is totally identical with that considered by this Board in Third Division Award 26452..."

In the fourth paragraph It again correctly states:

"We concur with the conclusions reached in the earlier award with respect to the Scope Rule..."

It is at this point the Majority goes astray when it states:

"...there is an irreconcilable conflict with respect to the facts. A search of the record reveals no evidence whatever in support of Organization's version of the facts and this Board is unable to resolve such conflicts. The Claim must be dismissed."

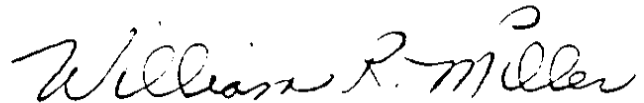
Contrary to the Majority Opinion the facts are identical to those found in Award 26452, Docket CL-26179, and should have brought about the same conclusion to sustain. Not only has the Award failed to recognize the substantial facts of

the case, it is contrary to the wishes of the parties. On pages four and five of the Carrier's Submission they state:

"Similar claims were subsequently filed and pursuant to an understanding between the parties are being held in abeyance to be settled on the basis of your Board's decision in the so-called pilot case currently filed with the Third Division in Case No. 85-3-102 (Docket No. CL-26179)).

"Instant claim is identical in all respects..." (underlining our emphasis).

The case at bar is identical to Award 26452 and should have been sustained as was the pilot case on the subject, and because it was not it is palpably in error and carries no precedential value.


William R. Miller, Labor Member

December 11, 1987