

The Third Division consisted of the regular members and in addition Referee Martin F. Scheinman when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union
(The Chesapeake and Ohio Railway Company

PARTIES TO DISPUTE: "Claim of the System Committee of the Brotherhood
(GL-10002) that:

(a) The Carrier violated Rules 37, 45 and others of the Clerks' General Agreement No. 10, as well as Memorandum Agreement effective August 21, 1978, when it required Claimant to perform duties of Weighmaster at Saginaw, Michigan, on August 30, 1980 retroactive sixty (60) days and continuing until violation ceases.

(b) The Carrier shall now compensate Claimant Edward Poinneau for one (1) hour's pay at the overtime rate of position C-357, Classification Clerk, beginning July 1, 1980 and each workday thereafter that he is required to perform the duties of Weighmaster at Saginaw, Michigan.

(c) In addition, the Carrier shall now compensate Claimant for the difference in rate of pay of Messenger Checker and Classification Clerk for each scheduled workday beginning July 1, 1980 and continuing for as long as he is required to perform the duties weighing cars assigned to position C-357, Classification Clerk, at Saginaw, Michigan."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

A Memorandum Agreement was negotiated by the parties in August 1978 which dealt with the transfer, consolidation and reorganization of clerical forces at Saginaw and Midland, Michigan. The purpose was to establish a Terminal Service Center at Saginaw, Michigan.

The Organization claims that Carrier violated Rules 37 and 45 of the Agreement and various provisions of the August 21, 1978 Memorandum of Agreement when it required the Claimant, a Messenger Checker to perform work which was assigned to the positions of Classification Clerk and Machine Operator. It argues that the duty sheets of Classification Clerk and Machine Operator clearly specify the duty of "weighing cars" while the duty sheet of Messenger Checker does not.

Therefore, the Organization maintains that Claimant is entitled to additional compensation since he was used during his regular assigned tour of duty to do work of another position.

In support of its claim the Organization cited Third Division Award 24492 for the proposition that the duty sheets specify particular functions that accrue to a position and that any work assigned in contradiction to those duty sheets constitutes a violation of the Agreement.

Carrier, on the other hand, insists that it did not violate the Agreement. It points out that Messenger Checkers at Saginaw have been performing weighing functions since August 1978 without protest. Carrier insists that the work of weighing cars has not been shown to be the exclusive work accruing to any particular clerical position at Saginaw.

Carrier further disagrees with the Organization's interpretation of Rule 37. It maintains that the Rule does not eliminate Carrier's right to have employees assist each other in the performance of their duties without additional penalty. For these reasons, Carrier asks that the claim be denied.

After reviewing the record, we are convinced that the claim must fail. We concur that the unrefuted evidence supports the practice of using Messenger Checkers to perform the disputed work since 1978 without complaint at Saginaw. Moreover, the work of weighing cars does not accrue exclusively to Classification Clerks or Machine Operators or to any clerical position at that location. In fact, the record demonstrates that it has always been considered incidental to the other duties of Messenger Checkers.

Finally, we note that Third Division Award 24492 is not applicable in this case. Although the Award addresses several of the same provisions as in this instant claim, here the record does not conclusively establish that the duty description sheets were bilateral. Rather, Carrier insists that it unilaterally drafted them. This contention was not sufficiently refuted.

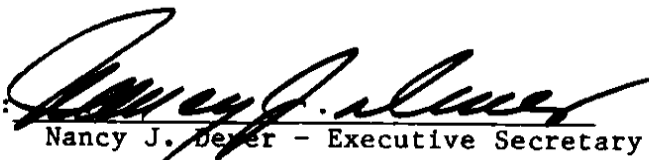
Accordingly, and for all of the foregoing reasons, the claim is denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois, this 4th day of May 1989.