

The Third Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union
(The Atchison, Topeka and Santa Fe Railway Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood
(GL-10232) that:

CLAIM NO. 1:

(a) Carrier violated the rules of the current Clerks' Agreement at Barstow, California, on December 31, 1986 and January 1, 1987, when it required A. I. Killman to take the holidays off and allowed another employe to perform his duties, and

(b) A. I. Killman shall now be compensated for eight (8) hours' pay at time and one-half for Car Clerk Position No. 6050 December 31, 1986 and January 1, 1987, in addition to any other compensation Claimant received for these days as a result of such violation of Agreement rules, and

(c) Carrier shall now be required to pay 10% interest compounded daily until claim is paid.

CLAIM NO. 2:

(a) Carrier violated the rules of the current Clerks' Agreement at Barstow, California, on December 31, 1986, when it required N. E. Miller to take the holiday off and allowed another employe to perform his duties, and

(b) N. E. Miller shall now be compensated for eight (8) hours' pay at time and one-half for Relief Car Clerk Position No. 9408/6051 for December 31, 1986, in addition to any other compensation Claimant received for these days as a result of such violation of Agreement rules, and

(c) Carrier shall now be required to pay 10% interest compounded daily until claim is paid."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees 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.

The two Claims herein relate to the same central issue, namely, whether Carrier violated the controlling Agreement, when it blanked Car Clerk Position No. 6050 on December 31, 1986, and January 1, 1987, and Relief Car Clerk Position No. 9408/6051 on December 31, 1986. It was the Organization's position that when said positions were blanked and the incumbents were required to observe designated holidays falling within their workweek, Carrier improperly assigned their work to other employees. In other words, the Organization asserted that Claimants should have been assigned such work on an over-time basis consistent with the requirements of Rule 32-G.

Contrawise, Carrier maintained that Rule 27 gave it the right to blank a position on a holiday, since the Rule explicitly provides that an employee's workweek may be reduced one day when a designated holiday falls on one of the employee's assigned work days. It disputed the Organization's contention that the work performed accrued exclusively to Claimants, arguing instead that it was pool type work. It referenced several Awards to substantiate its point. See Third Division Awards 18115, 13476. See also Award No. 12 of Public Law Board No. 17.

In considering these Claims, we concur with Carrier's position. We have carefully examined the evidentiary proofs submitted by the Organization, but we cannot conclude that the disputed work accrued exclusively to Claimants. Rather, it appears that other employees performed work, such as verifying and updating inbound and outbound trains, on days other than the claimed dates. Accordingly, in the absence of hard data that would firmly establish the position's exclusivity, Claimants would not have the right to claim pool type work. Our two recent Awards involving the same parties and the same basic adjudicative issue are controlling herein. We find no variant fact pattern to justify otherwise. See Third Division Awards 27206, 27207.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 29th day of March 1990.