

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 29528
Docket No: CL-29594
93-3-90-3-572

The Third Division consisted of the regular members and in addition Referee John B. LaRocco when award was rendered.

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

STATEMENT OF CLAIM:

"Claim of the System Committee of the Organization (GL-10521) that:

- A. The Carrier violated the provisions of the current Clerks' Agreement at Arkansas City, Kansas, during the month of June, 1989, when it required and/or permitted an exempt employee that is not covered by the rules of the Agreement to perform routine schedule clerical work, and
- B. Claimant J. M. McBride shall now be compensated for one day's pay (eight pro rata hours) at the rate of pay of Transportation Service Specialist for June 30, 1989, in addition to any other compensation Claimant may have received for this day."

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.

On June 30, 1989, an Assistant Trainmaster at Arkansas City, Kansas, weighed three cars. Claimant, who was assigned to a bulletined temporary vacancy, alleged that the weighing of cars was work that he and other clerical employees exclusively performed at Arkansas City before the Carrier abolished a number of clerical positions on May 17, 1989. The Organization charges that the Carrier violated Rule 1 (Scope) and Rule 2 by assigning the car weighing work to a Carrier official.

This Board recently resolved an almost identical issue between the same parties. In Third Division Award 27827, the Board ruled that the Organization had not satisfied its burden of proving that clerks weighed cars to the exclusion of all others on a systemwide basis. The Organization attempts to distinguish Award 27827 from this case on two grounds. First, the employee who weighed cars in the claim leading to Award 27827 was a Switchman who was a member of another labor organization. In this case, the work was performed by a supervisory employee and so the Organization need only show point exclusivity over the car weighing work. Second, the Organization points out that Award 27827 dealt with an electronic/computerized scale while the Assistant Trainmaster herein weighed the cars on a manually operated mechanical scale.

We are unpersuaded by the Organization's attempts to distinguish Award 27827. On this property the applicable Agreement contains a general scope rule. Public Law Board No. 2281, Award 1. Thus, to show that the disputed work is reserved to the clerical craft, the Organization must show that the class and craft of clerks have historically performed the disputed work to the exclusion of all others across the system unless the work is expressly enumerated in Rule 1. Third Division Award 25571, 25003. Even if a manager performs the work, the Organization must still show systemwide exclusivity absent precedential Awards on this property that performance of work by a supervisory employee relaxes the Organization's burden of proof (to point exclusivity) under the general scope rule. Third Division Award 28323. Thus, the fact that an Assistant Trainmaster performed the work in this case did not relieve the Organization of its burden of proving the work was reserved to clerks under Rule 1 through Rule 2-E. Finally, Award 27827 did not draw any distinction among the various types of weighing devices. Award 27827 addressed the disputed work, that is, the weighing of cars without differentiating between what device is used to weigh the cars.

To insure predictability and stability in labor-management relations, we must follow the precedents on this property. The Organization failed to show that Award 27827 was palpably erroneous. For the reasons set forth in Award 27827, we must deny this claim.

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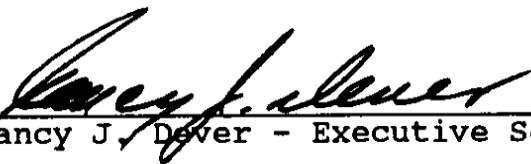
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A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 3rd day of February 1993.