

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30037
Docket No. CL-29927
94-3-91-3-337

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

(Transportation Communications International Union)
PARTIES TO DISPUTE: (
(Alton and Southern Railway Company)

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood (GL-10602) that:

1. Carrier violated the Agreement when, on the date of May 27, 1990, it required employe not covered by the T.C.U. Agreement to footboard members of train crew between points on the Alton and Southern Railway.
2. Carrier's action violated the Agreement, expressly Rule 1 and associated Rules contained therein.
3. Carrier shall now be required to compensate Mr. Don Case, East St. Louis, Illinois for eight (8) hours pay at the straight time rate of \$12.9386 per hour for the date of May 27, 1990."

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 employe 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 May 27, 1990 an Assistant Superintendent transported an Engineer and a Head Brakeman, members of the 11:59 p.m. Trimmer Crew, from a point in the East St. Louis yards to the Roundhouse. The Organization argues that this constituted footboarding a crew, work which it contends is reserved to clerical employees. The Carrier, in pointing out that less than a full crew was involved,

argues that there is no reservation of clerical work in such instance.

No dispute is raised concerning the availability of the Claimant to be called for the work.

The applicable Scope Rule is a "positions or work" Rule, which includes the following:

"Positions or work coming within the scope of this agreement belong to the employees covered thereby and nothing in this agreement shall be construed to permit the removal of positions or work from the application of these rules."

In support of its position, the Organization refers to three Carrier communications on the subject. On October 3, 1963, the Carrier wrote to the General Chairman in reference to various job descriptions, including the following:

"Yard Clerk - Card inbound cars and make out-bound train checks. Make inbound checks on connections and as required. Transport crew for footboarding."

A letter dated January 17, 1966, from the Superintendent to Yardmasters which stated:

"Sometime ago, we were in a dispute with the Brotherhood of Railway Clerks with respect to the use of employees other than clerks for the purpose of footboarding crews. This dispute was disposed of by our agreeing with the Organization that clerks would be used for this purpose when clerks are available."

An August 26, 1966, Superintendent's Memorandum was to similar effect.

Based on an incident occurring 18 months thereafter, Third Division Award 17934 stated:

"There is at issue in this case the question of whether the work of footboarding crews is within the exclusive jurisdiction of the clerks organization to perform."

After determining that an employee available at the punitive rate was to be considered "available", the Award stated the

"Carrier was bound to call the Claimant to work. This conclusion is also buttressed by the clear prohibition upon the Carrier from removing any work within the Scope Rule from the application of the Agreement."

In 1990, immediately prior to the incident here under review, Third Division Award 28355 reaffirmed Award 17934 in a dispute involving the transportation of Hostlers and Hostler Herders, concluding as follows:

"In considering this dispute we concur with the Organization's position. We recognize of course, that said positions [Hostler and Hostler Herder] were in existence for a short period of time, but Carrier considered such positions within the generic category of crews. Since under the authority of Third Division Award 17934, Clerks were responsible for footboarding crews, if a Clerk was available to perform such work and since we find no distinction among types of crews, we must, of necessity sustain the Organization's position."

In the dispute here under review, the Carrier argues that the employees transported (Engineer and Head Brakeman) were only part of a crew, rather than a full crew. The Carrier offers evidence as to previous instances in which other than clerks transported individual crew members. As a result, the Carrier suggests that the work assignment of "footboarding crews" does not cover such instances.

The Board finds no support for the Carrier's view. Just as Award 28355 found "no distinction among types of crews", the Board here sees no distinguishably different characteristic in transporting part of a crew to a work assignment from transporting a full crew. If the parties had meant to make such distinction, they could readily have done so.

As to the remedy, the Board will limit this to the payment of what would have been appropriate for a call to work for the Claimant.

A W A R D

Claim sustained in accordance with the Findings.

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NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: *Catherine Loughrin*
Catherine Loughrin Interim Secretary to the Board

Dated at Chicago, Illinois, this 17th day of February 1994.