

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30465
Docket No. CL-29912
94-3-91-3-302

The Third Division consisted of the regular members and in addition Referee James E. Mason when award was rendered.

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

STATEMENT OF CLAIM:

"Claim of the System Committee of the Organization
(GL-10595) that:

- (a) Carrier violated the provisions of the current Clerks' Agreement at Barstow, CA, on February 19, 1990, when it required C.D. Garcia to take the holiday off (President's Day) and allowed other employee(s) to perform the duties of his assignment, and
- (b) C.D. Garcia shall now be compensated eight (8) hours' at the rate of holiday pay for February 19, 1990, at the rate of Claimant's regular assigned position, in addition to any other compensation Claimant may have received for this day as a result of such violation of the Agreement, and
- (c) Proper compensation to be determined by a joint check of the Carrier's record and payroll."

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 employee 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 Claimant in this dispute was regularly assigned to Messenger Support Service Position No. 6043 at Barstow, California. The position was scheduled to work from 7 A.M. to 3 P.M., Monday through Friday with Saturday and Sunday as rest days. On Monday, February 19, 1990, a legal national holiday, Claimant was laid-in under the provisions of the applicable holiday rule of the Agreement. The instant dispute alleges that the work of Claimant's position was, in fact, performed by another employee who was on duty on February 19 and therefore Claimant should be allowed what he would have been paid if he had been permitted to work on the holiday.

The Organization in its presentation and progression of this claim argued that Claimant's position was not blanked on the holiday but rather the work of his position was performed by another employee and therefore Claimant was aggrieved and Carrier was in violation of the terms and conditions of the negotiated agreement.

The Carrier contended, without contradiction, that the complained of work was also a part of the assigned duties of the position which worked on the holiday and therefore Claimant did not exclusively perform such work and was properly laid-in on the holiday.

The basic issue which is involved in this case has been addressed on numerous occasions. On this property, we find a significant precedential determination which held as follows:

"We agree with the general principle enunciated in Third Division Award 18115, that where work is not exclusively performed by the incumbents of blanked positions, said work may be performed by other employees. However, in the instant case, there is no clear record evidence that Claimants did not routinely perform this work each day during their regularly assigned hours and no evidence that other employees performed this work. Had their positions not been blanked, they would have performed this work." (Third Division Award 28202)

The two types of situations which are recognized and set forth in the above quoted excerpt, namely (1) where disputed work is not exclusively performed by the incumbent of the blanked position and (2) where there is no evidence that other employees performed such disputed work, have been reviewed by numerous arbitral panels and have been consistently applied. To put it another way, if the work of the blanked position is not shown to be the exclusive function of the blanked position but rather is regularly shared by other positions, then the claims from the incumbents of the blanked positions have been rejected. However, if there is no evidence that other employees have regularly performed the work of the blanked positions, then the claims from the incumbents of the blanked positions have been sustained.

When applying these measures to the fact situation and evidence of record in this case, we find two prominent facts, namely:

1. At no time during the presentation and progression of this claim on the property do we find any contention by the Organization that the other employee who performed the work on the holiday did not also perform such work on other than the holiday; and
2. At no time during the progression of this claim on the property do we find any challenge to or contradiction of Carrier's material assertion that the complained of work has also been performed by other clerks on a regular basis.

In our determination of this case, we find a valuable, similar principle in Award 12 of Public Law Board No. 174 which held as follows:

"No other employee was assigned to fill Claimant's position, as such, on the subject date . . . either during the regular shift hours or by 'make-up' overtime. There is considerable overlapping of functions among the various members of the mail crew to which Claimant belonged. On the date in question no member of the crew was required to perform a type of work he had not previously done"

Likewise in this case. We have examined the evidence and argument as submitted by the parties in their on-property handling of this dispute and cannot conclude therefrom the work in question belongs exclusively to the Claimant. In the absence of any evidence to contradict Carrier's assertion that such work has been performed on a regular basis by other clerical positions on other than holidays, we are unable to conclude that Claimant was aggrieved when he was laid-in on the holiday. The claim of the Organization is, therefore, denied.

AWARD

Claim denied.

O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 13th day of September 1994.