

PUBLIC LAW BOARD 6417

In the Matter of the Arbitration Between:
NORFOLK SOUTHERN CORPORATION
(NORFOLK AND WESTERN RAILWAY)

and

NMB Case Nos. 7 and 8
Claims of E. J. Goletz

TRANSPORTATION COMMUNICATIONS
INTERNATIONAL UNION

STATEMENT OF CLAIM: Two claims of Conway, Pennsylvania Diesel Shop Materials Clerk E. J. Goletz for eight (8) hours at the punitive rate on the basis that Rule 1 (Scope) was violated when representatives of other shop crafts were assigned to move materials at the Shop on March 22, 2000 while materials clerks were on duty.

FINDINGS OF THE BOARD: The Board finds that the Carrier and Organization are, respectively, Carrier and Organization, and Claimant(s) employees within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted and has jurisdiction over the parties, claim and subject matter herein, and that the parties were given due notice of the hearing which was held on March 25, 2002 at Norfolk, Virginia. Claimant was not present at the hearing. The Board makes the following additional findings:

The Carrier and Organization are Parties to a collective bargaining agreement which has been in effect at all times relevant to this dispute, covering the Carrier's employees in the Clerk's craft.

Claimant was employed as a materials clerk at the Carrier's Conway, Pennsylvania Locomotive Repair facility. The record establishes that at approximately 7:05 a.m. on March 22, 2000, Carman D. Williams was assigned to operate a fork lift to move materials on Track 23 while a materials clerk was on duty. The record further reflects that at approximately 4:30 p.m. on the same date, Boilermaker W. R. Lane was assigned to operate a fork lift to move traction motor racks from the "staging area" to the traction motor area while a materials clerk was on duty. In due course, the Organization presented the instant time claims, alleging that Rule 1 (Scope) of the controlling Agreement was violated on the basis that moving and distributing materials in and around the shop facility (on other than third shift) constitutes work exclusively accrued to the clerks' craft.

The Carrier denied both of the claims, arguing primarily that the work at issue is entirely performed on third shift by members of other crafts, and on first and second shifts by other crafts incidental to their assigned duties. The Organization appealed the claim in accordance with Schedule Rules, and as resolution of the matter could not be reached on the property, it was submitted to the Board for disposition.

POSITIONS OF THE PARTIES: The arguments of the parties are substantively similar to those addressed in Awards 10 and 11 of this Board and are incorporated therefrom as follows.

The Carrier argues that Rule 1 (Scope) of the controlling Agreement was not violated, on the basis that it does not expressly reserve "use of forklifts" for covered employees. Moreover, the Carrier asserts that, "The duties of operating a forklift at the Conway Locomotive Repair facility are not now, nor have they ever been, performed exclusively by clerks." The Carrier points out that material is routinely received, unloaded and placed at the Conway Shop by members of other crafts on third shift, and as such contends that the disputed work is, "at best, shared."¹

The Carrier further argues that the issue herein before the Board should be denied on the basis of *stare decisis*, in that "analogous issues have already been decided on numerous previous occasions." In support, the Carrier cites Award 277 of SBA 1011, noting Referee Zamperini's ruling that members of other crafts may be required to move material around a locomotive shop on a *de minimus* and incidental basis without violating the Agreement.² Such, asserts the Carrier, is the case here.

The Carrier insists that the Agreement was not violated and accordingly urges the Board to deny the claim in its entirety.

The Organization argues that clerk employees covered by the instant Agreement have historically performed the disputed work on first shift when materials clerks are on duty and available. The Organization notes that the scope rule at issue is a "positions and work" rule, and contends accordingly that it "reserves the work

¹ The record establishes, however, that the instant alleged violation occurred on first shift, when materials clerks are employed and on duty.

² The Board notes that the *Zamperini* decision addressed a dispute at the Carrier's Juniata Locomotive Shop, and as such, the issue resolved therein was not identical to the one here.

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covered thereunder to Employees subject to the Agreement." In support, the Organization cites Award 1 of PLB 3085 (Eischen), Third Division Award 20382 (Dorsey), and finally Award 85 of PLB 1790 (Dolnick), which states in pertinent part:

Once a covered position is established, the work of that position belongs to an employee within the Scope Rule of the Agreement. The Carrier may not unilaterally transfer the work to whomever it chooses outside the Scope Rule. And this is true whether the work of the covered position is transferred to an employee totally excepted from the Scope Rule or is partially excepted.

The Organization further submits numerous statements signed by shop employees represented by various other crafts at the Conway locomotive facility, all of which allege that the disputed work is "always" performed by covered clerk employees. Accordingly, the Organization concludes that the Agreement was violated, and urges the Board to sustain the claim in its entirety.

DISCUSSION AND ANALYSIS: As noted, the factual record in this case, as well as the arguments of the Parties, parallels Cases 10 and 11 before the Board. Accordingly, and for reasons stated therein, both of the instant claims will be, and are, sustained on the same basis. However, only one penalty allowance will be awarded, on the basis that the controlling Agreement does not support duplicate payment to a single claimant for multiple violations on the same date, even though the violations may have occurred on different shifts. The evidence in this case does not, in fact, indicate whether or not the two violations on June, 28, 2000 occurred on the same shift. Nevertheless, the Board adopts the well-established principle that unless provided by agreement, more than one penalty day is not warranted, even though multiple violations on this nature may have occurred in a single day.

The Organization has demonstrated to the satisfaction of the Board, as it did in Cases 10 and 11, that the particular work performed by employees of other crafts on the date of claim, was that belonging to materials clerks on first and/or second shifts at the Carrier's Conway Diesel Shop. The Board is so persuaded on the basis that the instant record, like those pertaining to the prior cited Awards, contains numerous statements from various shop employees represented by other crafts, indicating that handling materials in the Conway Diesel Shop is "always" performed by clerks when they are on duty and available.

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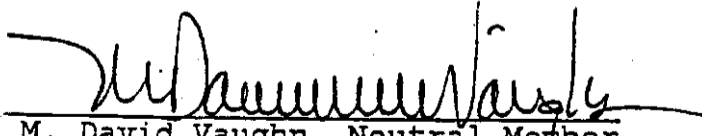
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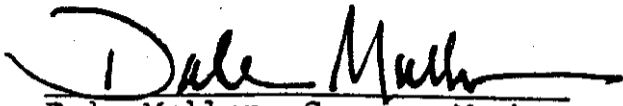
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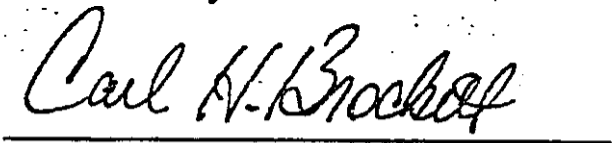
By referencing Awards 10 and 11 herein, the Board further applies its full and complete analysis in those cases to the facts in this record. Accordingly, and for reasons therein stated, the instant claims are also sustained. The following Award so reflects.

AWARD: The claims are each sustained, but the remedy is reduced to an award of one eight (8) hour penalty day at the applicable straight time rate. The Carrier shall implement the Award within 30 days from the date of its issuance.

Dated this 3rd day of SEPTEMBER, 2002.


M. David Vaughn, Neutral Member


Dale Mullen, Carrier Member


Carl Brockett, Employee Member