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AWARD NO. 35
NRAB DOCKET NO. CL-8628
CASE NO. 35
SSW FILE R-51-760-9
BRC FILE NR-27-1

SPECIAL BOARD OF ADJUSTMENT NO. 169

PARTIES) The Brotherhood of Railway and Steamship Clerks
TO)
DISPUTE) St. Louis Southwestern Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood:

(1) That Carrier is violating the current Clerks' Agreement when it permits Southwestern Transportation Company employees to rate and route LCL shipments at Jonesboro, Arkansas, before the regular assigned Rate Clerk, Mr. T. F. Nease, comes on duty on week days and when he is off on Saturday.

(2) That Mr. T. F. Nease be paid for one (1) hour at the overtime rate of his position for each of his work days Monday through Friday, March 22 through September 8, 1954, and be paid for two (2) hours, on the same basis, from September 9, 1954, and until violation is corrected.

(3) That Mr. Nease be paid for four (4) hours at the overtime rate for each Saturday from March 22, 1954, until violation is corrected.

FINDINGS: Under the facts as presented in this case, the work of giving information out as to rates and routing was not work that exclusively belonged to the claimant.

AWARD: Claim denied.

/s/ Frank P. Douglass
Frank P. Douglass, Chairman

/s/ W. E. Straubinger
W. E. Straubinger, Employee Member
(Dissent attached)

/s/ L. C. Albert
L. C. Albert, Carrier Member

Tyler, Texas
April 24, 1957.

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EMPLOYEE MEMBER'S DISSENT TO AWARD NO. 35

The entire "Findings" of this Award are brief and state:

"Under the facts as presented in this case, the work of giving information out as to rates and routing was not work that exclusively belonged to the Claimant."

From the reasoning of Chairman Frank P. Douglass in this Award, as well as others rendered by him, he gives the erroneous impression that work covered by the Scope of the Clerical Agreement can be performed with impunity by officials and employees not covered by the Agreement. Rate Clerk T. F. Nease was assigned by bulletin to perform the following duties:

"Briefly, duties consist of checking LCL and CL rates, revising and pro-ing waybills, filing freight tariffs and billing freight."

On page 3 of its Oral Argument, Carrier stated:

"He (Claimant Nease) also uses tariffs for other purposes to such extent as he may be required to do so by the Agent. This includes using tariffs to develop information as to proper rates for use of a shipper. Because of his familiarity with the tariffs, he often performs this function, but the fact remains that he may not prevent others from using the tariffs for the same purpose. The Agent could not confer upon him right to exclusive use of the tariffs."
(emphasis supplied)

Third Division Award 6101, Referee Paul G. Jasper, held:

"Even though the work is not spelled out in the Scope Rule, it has been assigned to employees whose positions are described in the Scope Rule. It has been the practice and custom to assign Clerks at the South Tacoma Shops to do the clock watching. Past practice, custom and tradition at the South Tacoma Shops have made the clock-watching work, work of the Clerks coming within the Clerks' Agreement. See Award 5404."

Third Division Award 7427, Referee H. Raymond Cluster, held:

"*** In this case, the Carrier argues, the assignment was not exclusive because of the occasions on which, for the sake of convenience, the Agent-Telegrapher did this kind of work during Claimant's regular assignment. However, we do not think that the use of the phrase 'exclusively assigned' in those cases has the restricted meaning which Carrier would give to it; namely, that the clerk did every bit of the work. Rather, we think the meaning intended was that the work was regularly, ordinarily and customarily accomplished by the clerks as part of the regular duties of their assignments - a state of facts which is admitted to be so in this case. ***."

Employee Member's Dissent to Award No. 35

The work covered by this dispute was assigned to Claimant by bulletin; Carrier conceded that Claimant performed the work during his assigned hours and Awards 6101 and 7427 uphold our position that the work is covered by the Clerks' Agreement.

The decision of Chairman Frank P. Douglass is without logical basis.

/s/ W. E. Straubinger
W. E. Straubinger, Employee Member