

The Third Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

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

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood (GL-10179) that:

(a) Carrier violated the provisions of the current Clerks' Agreement at Elkhart, Kansas, on April 17, 1986, when it required and/or permitted an employe that is not covered by the rules of the Agreement to perform routine schedule clerical work, and

(b) Claimant M. J. Randolph shall now be compensated for one call payment (three pro rata hours) at the rate of Chief RFO Clerk Position No. 6137 for April 17, 1986, 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.

The Organization contends that when Carrier required an employee not covered by the Rules of the scheduled Agreement to perform asserted routine clerical work, it violated the Agreement, particularly Rules 1 (Scope Rule) and 2 (Grades of Work). Specifically, on April 17, 1986, the Manager of the Regional Freight Office at Satanta, Kansas, performed a yard check at Elkhart, Kansas, to update Carrier's computer yard inventory. This work entailed a check of Tracks 1901, 1903, 1904, and 1998 to reflect the actual physical standing of rail cars on these tracks. The Organization maintained that said work was historically and traditionally performed by Clerks and, as such, was

protected under Rule 2-E, which prohibits the removal of positions or work from the application of the schedule Agreement. It cited several Awards to support its interpretative position. See Third Division Awards 2253, 14650, and Award No. 1 of Public Law Board No. 2281. Moreover, it contended that when Rule 2-E was bargained into the Agreement effective January 1, 1980, the work herein was unconditionally protected clerical work.

Carrier asserted that the work of checking blind sidings is not exclusively reserved to the Clerks, but has been performed systemwide by Managers of Regional Freight Offices as well as by Conductors and Trainmen. It observed that Rule 1 (Scope Rule) is general in nature, not specific as contended by the Organization, and noted that the Organization had sought to modify Rule 1 by its several successive Section 6 Notices.

In considering this case, the Board concurs with Carrier's position. Firstly, as the moving party, the Organization is obligated to establish by explicit rule language or persuasive systemwide practice, that checking blind sidings was traditionally performed by the Clerks. There has been no showing that such work is contained in Rule 1, nor an effective showing that Clerks exclusively performed such work on a systemwide basis. Secondly, when Rule 2-E is examined within the context of its relationship to Rule 1, said Rule merely protects the positions or identifiable work within Rule 1. Accordingly, since checking blind sidings is not contained within Rule 1, and since the record is bereft of unambiguous evidence that Clerks exclusively performed such work systemwide, the Board, of necessity, must find for the Carrier and deny the Claim.

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 29th day of March 1990.