

Public Law Board No. 3840

Parties to Dispute

Allied Services Division/Brotherhood of Railway, Airline and Steamship Clerks, Frieght Handlers, Express and Station Employees, AFL-CIO	) ) ) ) ) ) ) ) )	Case No. 5
vs	) ) ) )	Award No. 5
Western Weighing and Inspection Bureau	)	

STATEMENT OF CLAIM

1. The Western Weighing and Inspection Bureau violated Rule 1, among others of the Agreement, when it, subsequent to the abolishment of office positions, had its Agent, Mr. L. J. Enslinger, performing fully covered work, including but not limited to, validation and signing of bills of lading, typing letters, and answering phone calls.
2. The Bureau shall now be required to compensate Mr. Victor Schiro an amount equal to what he could have earned had he been recalled from the furloughed list to perform these duties for the period, January 4, 1983 through February 14, 1983.

FINDINGS

A pay claim was filed on March 7, 1983 by the Organization on behalf of the Claimant on the grounds that a partially covered employee performed the duties of a stenographic position for approximately five (5) weeks prior to the abolishment of that position by the company. The duties of this position, according to the Claimant, included validating bills of lading, answering correspondence and handling telephone calls.

After the claim was denied on property it was appealed by the Organization up to and including the highest Carrier officer designated to hear such before it was docketed before this Public Law Board for final adjudication.

Public Law Board No. 3840 (Award No. 5; Case No. 5)

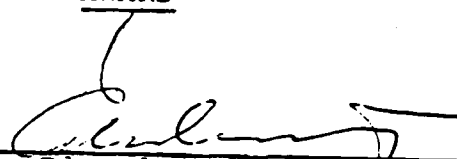
It is the position of the Organization that the company was in violation of Rule 1 - Scope of the current Agreement when it assigned the duties at bar to a partially covered employee.

In cases such as this the burden of proof lies with the Claimant as moving party (See Second Division 5526, 6054; Fourth Division 3379, 3482; Public Law Board 3696, Award 1). A review of the record shows that there is insufficient evidence of probative value to warrant conclusion that the partially covered employee performed work which was other than incidental to the functions of Position No. 94, Steno-Clerk and de minimus doctrine here applies (See Fourth Division 396, 2122, 3168; Public Law Board 3833, Award 1). Irrespective of this consideration, however, there is also insufficient substantial evidence herein to show that a partially covered employee was barred from performing the routine clerical and office work in question.

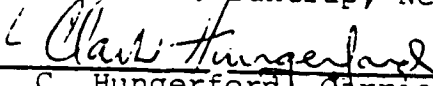
Since the instant claim cannot be sustained on merits the Board need not rule on the company's procedural objection that there was an improper Claimant since Mr. Schiro had never been judged qualified to hold Position No. 94, nor did he ever seek protection under Agreement Rule 28(f) in order to attempt to qualify for such.

AWARD

Claim denied.



Edward L. Suntrup, Neutral Member



C. Hungerford, Carrier Member



W. R. Miller, Employee Member

Date: 3-11-86