Award No. 6255
Docket No. CL-6386

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Frank Elkouri, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES

CHICAGO & EASTERN ILLINOIS RAILROAD COMPANY

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

(1) That Carrier violated the rules of the Clerks' Agreement when on July 31, 1950 they abolished the Class 1 position of Shop Bill Clerk, rate $236.49 per month in the office of Car Accountant, Chicago, Illinois, and had theretofore assigned a significant portion of the normal duties attached thereto to a Class 2 messenger position, rate $197.49 per month.

(2) That the occupant of the Messenger position, Mrs. Mabel Smith, as of the date the change was made, on or about June 1, 1950, and her successor if there be any, all to be determined by the joint check, be paid the difference between the Messenger rate of $197.49 and Shop Bill Clerk rate of $236.49 per month from June 1, 1950 to date situation forming basis of this claim is corrected.

EMPLOYES STATEMENT OF FACTS: A. Prior to April 1950 Carrier maintained in its Car Accounts Office at Chicago, a clerical force to handle certain car records. The employes in this office maintained their seniority in District No. 5 pursuant to provisions of Rule 5 of the Clerks' Agreement.

Management elected to change the then existing manual method of handling the car records to a tabulating machine system consolidating it with an existing machine bureau in the General Auditor's Office, Seniority District No. 1.

This proposed change disturbed the then existing status of the employes in both the Car Accountant's Office, Seniority District No. 5, as well as employes in Seniority District No. 1 in the General Auditor's Office, hence Management sought an agreement with the Employes that would permit of the transferring of employes from one seniority district and department to another. Such an agreement was consummated on April 19, 1950. The transfer was made on June 1, 1950. Copy of the agreement is attached as Employes' Exhibit No. 1.

Among other considerations the agreement provides:

Negotiations relative to rearrangement of the work made necessary because of the change in the method of operation were conducted in good faith by Carrier. The Committee was apprised of all changes to be made, how the work was to be assigned and appropriate rates to be established. The Committee was handed a memorandum (Carrier's Exhibit "B") showing in detail just what Carrier proposed to do. Indicated on this memorandum was the abolishment of the Shop Bill Clerk position together with the assignment of that portion of the duties remaining of that position. The recording and checking of the interline reports was indicated thereon as being transferred to the Messenger position. The entire operation was discussed in considerable detail. The Committee raised no objection to the transfer of the work as indicated. In the face of these negotiations and commitments made as a result thereof, all conducted in good faith on the part of Carrier and ostensibly concurred in by the Committee at that time, General Chairman Keerns in appealing this claim to the Manager of Personnel under date of October 12, 1950 (Carrier's Exhibit "C") repudiates those commitments. To support his position he states, "It is our contention that proposals are only the beginning point of any negotiation of this type and when the Agreement is consummated on the points in discussion that the proposal has served its full purpose and is not binding upon either party. * * *"

The agreement to so assign the work was at no time protested by the Committee during the negotiations. The assignment of the work to the Messenger position in the manner indicated, together with the reassignment of work to other positions, was carefully and fully outlined to all concerned. The decision was agreed to following full discussion and not at the "beginning point" of the negotiations. It is Carrier's position that the commitments are binding upon the parties. If such had not been the understanding, certain concessions agreed to by Carrier would not have been concurred in.

It is apparently Petitioner's position that since the Memorandum Understanding entered into by the parties on April 19, 1950 make no reference to the specific rearrangement or reassignment of work, such as is here made a subject of dispute, they are accordingly not bound by the commitments agreed upon in conference preceding the execution of the above-mentioned instrument. Copy of the Memorandum Understanding is attached hereto as Carrier's Exhibit "I". From this agreement it is apparent that its sole purpose was only to provide for the transfer of certain employes with their work from one seniority district to another and does not purport to cover any of the other details resulting from the change in the method of operation. However, it cannot seriously be disputed that the change could not have been effected except by agreement between the parties relative to the distribution of work, etc., nor has any showing been made that any other rearrangement of work was agreed to other than that outlined in memorandum submitted as Carrier's Exhibit "B".

Carrier submits that the transfer of the employes involved in this change, as well as the method of redistribution of the work, was mutually agreed to by the parties, that the claim for a higher rate for the Messenger position is not warranted and claim should be denied.

The Carrier affirmatively asserts that all data contained herein has been handled with the employes' representatives.

(Exhibits not reproduced).

OPINION OF BOARD: This case arises out of the fact that the Carrier abolished the position of Shop Bill Clerk and assigned some of its duties to the Messenger position. The Carrier, contemplating a change from the manual method of handling car records to a tabulating machine system, desired to transfer certain clerical employes with their work from Seniority District No. 5 (Car Accounting Department) to Seniority District No. 1 (Tabulating Machine Department). In order not to violate Rule 5 of the applicable agree-

ment, the Carrier sought agreement of the Employes for the transfer; such agreement was reached by Memorandum Understanding of April 19, 1950. Thereafter, in carrying out the change in method of handling car records, the Carrier discontinued the position of Shop Bill Clerk in Seniority District No. 5. This was on July 21, 1950. The occupant of the discontinued position thereupon exercised seniority rights to displace Claimant, Mrs. Mabel Smith, from the $233.99 per month Car Record Clerk position, and Claimant moved into the $197.49 per month messenger position. Soon thereafter Claimant filed the present claim, contending that a signficant portion of the higher rated duties, consisting of "recording and checking receipt of interchange reports", of the abolished Shop Bill Clerk position had been retained in Seniority District 5 and had been assigned to Claimant's lower rated Messenger position. Claimant relies primarily upon Rule 67 of the 1922 agreement between the parties. Rule 67 provides:

> "Positions (not employees) shall be rated and the transfer of rates from one position to another shall not be permitted."

Claimant contends, in effect, that the rate of the Messenger position was transferred to the Shop Bill Clerk position.

The Carrier contends that it did not violate the agreement for two reasons. First, the Carrier alleges that "the work of recording and checking interline reports consumed considerably less han 34% of the time of" the discontinued position. Second, the Carrier alleges "that the transfer of the employes involved in this change (from manual to machine system) as well as the method of redistribution of the work, was mutually agreed to by the parties . . ."

The record evidences rather severe conflict as to the amount of Shop Bill Clerk position work that was assigned to the Messenger position. Claimant contends that the Shop Bill Clerk position involved "about 6 hours per day recording and checking Interchange Reports." The Carrier, on the other hand, contends that while Claimant, "at the outset of the work rearrangement, may have devoted on occasion up to 3½ hours per day to this task, experience increased her proficiency within a very short time to the point where she did not devote more than 2½ hours per day in the performance of this work." One might suspect that both parties, being in good faith convinced of the merit of their view, have misestimated somewhat the time actually involved. Indeed, it could as likely as not be that Claimant did perform at least four hours of clerical work per day when the instant claim was filed. In any event, one probability seems exceedingly strong—if Claimant did not perform at least four hours of clerical work when the claim was filed, she performed very close to it. Four hours and a little more, or four hours and a little less, either way as the case may be, without engaging in the useless practice of splitting hairs, one must conclude that the amount of clerical work involved was definitely substantial. Sufficiently so, in fact, that there was much more than merely a vague or incidental resemblance between the discontinued Shop Bill Clerk position and the Messenger position worked by Claimant at the time the instant claim was filed. Rule 67 is specific, providing that "the transfer of rates from one position to another shall not be permitted." The rule does not say just how much work of one position need be transferred to another position to effectuate in essence a transfer of rate from one of the positions to the other. But certainly where, as in the present case, a very substantial amount of work is transferred, Rule 67 would appear to be violated unless the transfer is undertaken by mutual agreement of the parties.

It should be noted that in addition to Rule 67, the Employes rely upon Rules 68, 70 and 79 of the applicable agreement. In Award 751 this Division held that the assignment of **three** hours' work to a lower rated employe was a violation of the intent of rules essentially identical to the three last named. There this Division said:

> "The negotiated rates covering positions of course took into consideration the attendant duties, and if after agreeing upon the rates the carrier could switch the duties around in this manner, it could completely nullify the wage scale."

Also, it might be noted, in that case this Division said that "The four-hour line of demarcation between Class 1 and Class 2 employes provided by the scope rule has no bearing in the matter." This statement applies in the instant case also.

The Carrier itself seems to recognize that enough recording and checking of interline report work was involved to require Employe consent for the transfer. At least it cannot be denied that the Carrier defends very strongly that the Employe **did** agree to the transfer. The Carrier agrees that the April 19, 1950, Memorandum Understanding provides only for the transfer of certain employes with their work from one seniority district to another. But the Carrier declares that during negotiations pertaining to the change in method of handling records the Employes had been handed a memorandum (Carrier's Exhibit "B") informing the Employes of the proposed transfer of duties to the Messenger position. The Employes quickly admit receipt and discussion, with the Carrier, of the memorandum. But the Employes emphatically deny time and again that they accepted the blanket proposal—they insist that they agreed only to what was written into the April 19, 1950, Memorandum Understanding.

This case seems to present perfect justification for use of the so-called "parol-evident rule", according to which a written contract consummating previous oral and written negotiations is deemed to embrace the entire agreement. In this connection, a statement of this Division in Award No. 5441 seems especially pertinent:

> "Here, the letter on which the Carrier relies or a provision of similar import was not included in the Contract as subsequently executed. Therefore, we cannot reach out and say it became a part of that agreement. True, if it had been mentioned or a provision of like import had been incorporated therein, even though in ambiguous terms, we could then resort to intention of the parties in order to ascertain its meaning but that cannot be done where—as here—one of the parties is seeking to read something into a contract that is not there. If, as the Carrier now contends, whatever was referred to by the language used in the letter was one of the important matters under consideration during the preliminary negotiations leading up to the execution of the present Agreement, it was its duty to see such matter was included before giving its approval to that instrument by authorizing its representatives to affix their signatures thereto as written. Having failed to do so the responsibility for its neglect must be borne by the Carrier, not by someone else."

Thus, in our present case it was the Carrier's duty to see that the transfer of duties to the Messenger position, having been discussed in negotiations, be covered by the written agreement consummating the negotiations. Having failed to do so, the Carrier cannot now be permitted to insist that the Employes agreed to the transfer.

Award No. 5700 supports the propriety of the use of a joint check such as is requested by Claim (2).

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Carrier violated the agreement.

AWARD

Claim (1) and Claim (2) both sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 7th day of July, 1953.