

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, Referee

PARTIES TO DISPUTE:

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

DULUTH, MISSABE AND IRON RANGE RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6755) that:

(1) Carrier violated the effective Clerical Agreement, particularly Rules 1, 2 and 9, in the Traffic Department of the Carrier's General Office, when commencing January 6th through 17th, 1969, 10 work days; and January 23rd through February 5th, 1969, 10 work days, a Carrier employe not of this Craft and Class, nor of Supervisory status, performed the regularly assigned work of the fully covered position of Rate Clerk and Tariff Compiler.

(2) Claimant, Reynold E. Angell, shall now be compensated at the rate of pay of his position for 10 days from January 6th through 17th, 1969; and 10 days from January 23rd through February 5, 1969.

EMPLOYEES' STATEMENT OF FACTS: Claimant Angell was the successful bidder on bulletin issued by the Traffic Department on May 11, 1964 (Employees' Exhibit A). The assignment of Claimant was published on May 19, 1964.

The duties of the Rate Clerk and Tariff Compiler have historically been, with regard to the issues involved in this dispute, the compilation of DM&IR freight tariffs and the compilation of all DM&IR division sheets, as well as other duties.

During the period of this claim the Traffic Department of the Carrier was involved in the reissuing of Tariff 2000-H, and the computation of division factors for WTL Division Sheet 888. As stated in the bulletin, these were duties regularly assigned by bulletin to, and in practice performed by the Rate Clerk and Tariff Compiler, the position to which Claimant was assigned on the dates of this claim. Admittedly Supervisory employes have historically directed and supervised such work.

The effective Agreement was violated when a Carrier employe not of this Craft and Class, nor of Supervisory status, a Mr. Richard Bajkowski, who is

"RULE 9. BULLETINS

(a) Except as provided in Rule 1, all new positions and vacancies will be promptly bulletined in agreed-upon places accessible to all employees in all districts for a period of five (5) calendar days, bulletin to show location, title and description of position, rate of pay, assigned hours of service, assigned meal period and assigned rest days. Employees desiring such positions will within five (5) calendar days of date of posting of the bulletin, file their application with the official whose name is signed to the bulletin, sending copy to Local Chairman. The name of the successful applicant will immediately thereafter be posted for a period of five (5) calendar days where the position was bulletined.

(b) Successful applicants for bulletined positions will be placed thereon as quickly as possible but not later than five (5) calendar days after notice of assignment.

(c) When more than one vacancy or new position exists at the same time, employees shall have the right to bid on any or all, stating preference. Nothing in these rules shall be construed to prevent employees bidding on all bulletined positions, irrespective of whether the position sought is of the same, greater or lesser remuneration.

(d) Employees declining promotions or declining to bid for a bulletined position shall not lose their seniority."

Copies of the correspondence involved in the handling of the claims in this case on this property are attached and marked as "Carrier's Exhibit A."

(Exhibits not reproduced.)

OPINION OF BOARD: On May 11, 1964, Carrier bulletined the position of Rate Clerk and Tariff Compiler in compliance with its Agreement with Clerks. Among the "Duties" of the position listed in the bulletin are, with emphasis supplied:

1. **Compilation of DM&IR Freight Tariffs** in accordance with the rules prescribed in Interstate Commerce Commission Tariff Circular No. 20 and Railroad Research Group Manual 1-A. Also in compliance with rules and practices prescribed by the Minnesota Railroad and Warehouse Commission and Western Truck Lines Committee.
2. **Compilation and issuing of all DM&IR Division Sheets.**

Claimant was the successful bidder and was assigned on May 19, 1964. He was the owner of the position at all times material herein.

The Scope Rule of the Agreement is general in nature. Accord, Award No. 14157. Consequently, Clerks, to prevail, have the burden of proving by substantial material and relevant evidence of probative value that the work involved in the dispute, to which Clerks make claim, has been performed exclusively — historically, traditionally and customarily — by employees covered by the Agreement.

The Claim was precipitated by the reissue of DM&IR tariff 2000-H and the compilation of division factors for Western Trunk Line division sheet number 888. The parties are in agreement that some of the tasks involved in the project were reserved to Clerks and others had been historically, traditionally and customarily performed by supervisors whose positions were not within the scope of Clerks' Agreement. The issue in the case is whether work involved in the project performed by an employee identified as holding the position of Pricing Analyst Trainee was work reserved to Clerks.

The record is not definitive as to the duties of the Analyst or how he fitted, if he did, into the Carrier's supervision set-up. The only certainty is that the position was not covered by Clerks' Agreement.

Clerks aver that the disputed work is exclusively reserved to employees covered by its Agreement. Carrier categorically denies the averment; and proffers as an affirmative defense that the work performed by the Analyst had not been, in the past, exclusively performed by Clerks. From the evidence of record we are unable to resolve the conflict. We, therefore, are compelled to dismiss the Claim for failure of proof.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees 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 Claim must be dismissed for failure of proof.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 9th day of October 1970.