



Award No. 18605  
Docket No. CL-18805

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**J. Thomas Rimer, Referee**

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**PARTIES TO DISPUTE:**

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

**CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD  
COMPANY**

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood (GL-6776) that:

1) Carrier violated, and continues to violate the Clerk's Agreement at the Fullerton Avenue Office Building, Chicago, Illinois, when in reducing forces in the Office it failed to abolish the lowest rated Statistical Clerk position and in lieu thereof abolished a higher rated Statistical Clerk position.

2) Carrier shall be required to reinstate Statistical Clerk position 46260.

3) Carrier shall be required to compensate employe R. Kauckle an additional day's pay at the pro rata rate of Position No. 46260 for February 24, 1969 and for all subsequent days until the violation is corrected.

**EMPLOYES' STATEMENT OF FACTS:** At Fullerton Avenue, Chicago, Illinois, the Carrier maintains an office of Assistant Comptroller in Seniority District No. 71. While the employes in that office are separated as to branches or bureaus, all are located in one office under the general supervision of the Assistant Comptroller who bulletins and makes the assignments to positions located therein.

Prior to February 21, 1969 the Carrier had the following Statistical Clerk positions in effect in the Office of Assistant Comptroller, at its Fullerton Avenue Office in Seniority District No. 71:

Position 46230	— Rate of pay	\$29.8052 per day
46750	"	"
41150	"	26.6271 per day
41160	"	"
46260	"	27.6034 per day

**OPINION OF BOARD:** The claim in this dispute as identified by the parties, rests on a determination of the meaning of the word "office" in the application of Rule 12 (c) which reads in part:

**"Rule 12 — Reducing Forces**

(c) In reducing forces in an office, the lowest rated position in the class in which the reduction occurs will be abolished."

The claim alleges that the Carrier should have abolished the lowest rated Statistical Clerk position in its Fullerton Avenue office building and not the lowest rated Statistical Clerk job in the office of the Auditor of Passenger Accounts where the reduction in force and job abolishment took place.

The Organization considers that the "office" contemplated in Rule 12(c) for purposes of job abolishment covers the entire clerical force of some 500 at this single location. In support of its position it points to the Scope Rule, 1(b), (c) and (d) and Rule 2 "Seniority Districts," both of which refer to an "office" of Assistant Comptroller (Fullerton Ave.). It is further argued that this concept of a single office is supported by the fact that all assignment bulletins for Seniority District 71 are issued by the Assistant Comptroller and by the Agreement effective September 15, 1964 which effected the consolidation of seniority districts in the accounting offices at Fullerton Avenue into a single district, which at the same time served to consolidate the "offices" into a single "office" for purposes of Rule 12(c).

That Agreement is prefaced as follows:

"As between the undersigned it is agreed that seniority districts in the Accounting Offices at Fullerton Avenue, Chicago, Illinois, will be consolidated, effective September 15, 1964, in the manner and to the extent indicated below: \* \* \*."

The Carrier's position is simply stated. Both before and after the instant claim was filed, the Organization accepted the existence of separate offices under the general supervisory jurisdiction of the Assistant Comptroller within Seniority District 71. The consolidation agreement of September 15, 1964 makes reference only to the consolidation of "seniority districts in the Accounting Offices" and that Rules 1 and 2 of the July 1, 1967 Agreement upon which the Organization relies, deal with matters of seniority and jurisdiction and not with the identification of an "office" to which Rule 12(c) applied when the instant claim was filed February 24, 1969, some years after these agreements were negotiated.

The Carrier further points to its letter of April 29, 1966 which notified the Organization of the identity of its representative, by job title, in each of the eight offices who was authorized to receive a claim in the first instance. The present claim was indeed filed with the Auditor of Passenger Accounts in whose office the Claimant was employed. The Carrier cites this action as significant in the recognition by the Organization of the existence of this separate office within the group of offices under the general direction of the Assistant Comptroller. This recognition was given further emphasis by letters written by representatives of the Organization to the Carrier which make specific reference to one or more offices within Seniority District 71, as recently as October 1970.

The Carrier further argues that, logically, it must take this view of the language in job abolishment by directing its attention, as here, to the lowest rated Statistical Clerk in the office where there is no longer work to support such position, rather than to a position in another office where there is ample work to justify its continuance.

The Carrier contends that the job abolishment was taken, "in accordance with past practice of long standing \* \* \* without any exception being taken thereto by the Clerks' Organization prior hereto." It would appear that the time span between the effective dates of the agreements cited by the Organization in support of its position (September 15, 1964 and July 1, 1967) and the filing of the claim on February 24, 1969 was of sufficient duration for the Carrier to have established a meaningful practice in the construction and application of Rule 12(c) which was followed in the instant case. This contention is not refuted by the Organization in the record before this Board.

There is no need to cite in detail the many precedential awards which hold that custom and practice are controlling in determining the intent of the parties where the language of the Agreement is unclear or ambiguous. This Board must also give weight to the well established principle that material statements made by one party and accepted or not denied by the other may be accepted as established fact (Award 9261).

The meaning of the word "office" as used in Rule 12(c) is not clear on its face, as the Organization would contend. It has relied on the use of the word in Rules 1 and 2, which the Carrier states are irrelevant to the matter in dispute, since the Rules themselves relate to seniority and scope of the bargaining unit alone.

Careful reading of these Rules, together with the terms of the Seniority consolidation agreement of September 15, 1964 brings this Board to the same conclusion with respect to these agreements. Further, the Organization has offered no evidence in the record to rebut the Carrier's assertion of a consistent and long standing practice in its application of the Rule 12(c) in the abolishment of jobs. For these reasons the Board concludes that the Organization has not met its burden of proof in establishing a violation of the contract by the Carrier in the abolishment of Statistical Clerk Position 46260, as claimed.

**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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: E. A. Killeen  
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of June 1971.