

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19548
Docket Number CL-19610

Frederick R. Blackwell, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
(
(The Western Pacific Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL 7028)
that:

1. The Carrier violated the Rules of the Clerks' Agreement by permitting and/or requiring Chief Clerk Wm. A. Sherrill, holding an excepted position in Seniority District 12, to perform routine clerical work assigned to employees on bid positions in Seniority District 18.

2. Mr. Paul Silva is entitled and shall now be compensated payment of a minimum call for September 1, 2, 3, 4, 8, 9, 10, 11, 14, 15, 16, 17, 18, 21, 22, 23, 24, 25 and continuing until the violation has been corrected.

OPINION OF BOARD: Claimant, Paul Silva, was the regularly assigned Car-Train Desk Clerk when this dispute arose. The basis of claim is that Agreement between the parties, effective December 16, 1943, revised September 16, 1965, was violated on September 2, 1970, when the duties of Car-Train Desk Clerk, which is a bulletined position, were transferred to Chief Clerk, Marketing, which is a Rule 2 excepted position. It is specifically alleged that Carrier violated the following Letter of Understanding which was entered into by the parties under date of August 18, 1965.

"A-111 Rev. of Schedule
Rule 2 (6)

Mr. Frank James
General Chairman BRC
1788 Albert Avenue
San Jose, California

Mr. R. J. McCarthy
West Coast Representative BRC
953 Pacific Building
San Francisco, California

Gentlemen:

This will confirm our statements to you that other than by reclassification of a bulletin position under the procedure established in Letter Agreement Rule 2 (4), the contents of Letter Agreement No. 4 do not contemplate the transfer of work from a bulletined position to a Rule 2 position.

Very truly yours,

/s/ W. A. TUSSEY
Manager of Personnel"

Rule 2 positions are filled by Carrier without regard to seniority, and an occupant of such a position is not subject to displacement except by Carrier approval.

The Car-Train Desk Clerk duties claimed to have been transferred are the following:

Receiving calls from shippers for empty cars; making all car orders-Forms 10220 and 10220A-for demurrage purposes.

As proof that such a transfer of duties occurred, Petitioner offered in evidence the following September 2, 1970 letter of Mr. J. H. Conley.

"We are in receipt of a wire from Mr. Plummer's office, concerning the handling of interior equipped cars after September 1st. On this date the Marketing Service Representatives, located at the Customer Service Center at 19th and Jay will accept all orders for Car Kind Codes D-E-J-K-Y and some R0 from the shippers in this area. This means the following changes in OIS procedure:

1. Car Desk Clerks at this station will not be involved in preparation or transmission of form 10220 or 10220A.a
2. After transmittals of form 10220A have been made, new car assignment message type 304 will be transmitted to car location Agent.
3. After car assignments are made to order Marketing Service Representatives will mail completed forms 10220 and 10220A to Agents for demurrage records.
4. These changes apply to interior equipped box cars only = CKC shown above. No changes in ordering and assignments of other types of cars at this time.
5. However, car assignment message (304) can also be used to move the above listed car kinds from one region to another in same manner as our present distribution orders."

Carrier's position is that no work was transferred to the Chief Clerk, Marketing, and that, after the change in procedures, he continued to do the same work he did before the change. Also that the work formerly done by the Car Desk Clerk was eliminated through the use of teletype.

Petitioner offered no direct evidence regarding Carrier's denial of a transfer of work, but in its rebuttal brief made the following statement:

"The further contention that the work was rearranged in order to eliminate duplication is likewise an attempt to justify their violation of the Agreement Letter. If this logic was valid, the Carrier would be free to transfer any clerical work performed by fully covered positions to excepted positions by merely having the work duplicated on both positions followed by reliance if (sic) elimination of duplication."

We have carefully analyzed Petitioner's evidence, which consists exclusively of the September 2, 1970 letter of Mr. Conley. Nowhere in this letter is there any direct or indirect evidence that the subject Car-Train Desk Clerk duties were transferred to Chief Clerk, Marketing. With respect to the Car Desk Clerks, the letter merely says that they "will not be involved in preparation or transmission of form 10220 or 10220A". However, Carrier explains the reason for this as the elimination of this work through the use of teletype. We also note that Petitioner's above quoted statement, though ostensibly arguing that Carrier's action was not justified, also amounted to an indirect admission that no transfer of work did in fact occur. We find therefore, on the record as a whole, that Petitioner did not establish that a transfer of work did in fact occur, and, for that reason, we will dismiss the claim.

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 Employee involved in this dispute are respectively Carrier and Employee 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 be dismissed.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

E. G. Killen
Executive Secretary

Dated at Chicago, Illinois, this 10th day of January 1973.