

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19550
Docket Number CL-17113

William M. Edgett, Referee

(Brotherhood of Railway and Steamship Clerks,
(Freight Handlers, Express and Station Employees

PARTIES TO DISPUTE: (

(Erie Lackawanna Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6235)
that:

1. Carrier violated the rules of the Clerks' Agreement when, on September 20, 1965, it established and advertised a new position titled "Operator-Clerk" at North Randall, Ohio under the T.C.E.U. Agreement and assigned clerical work and duties to this new position.

2. Operator Clerks are not covered by the Clerks' Agreement, therefore, Carrier removed work and duties covered by the Scope Rule of the Clerks' Agreement which resulted in depriving the Clerk at North Randall station the right to perform work that is rightfully hers.

3. Carrier shall now compensate Clerk Patricia Rossodivito and her successors and/or successor, four (4) hours pay at time and one-half rate of pay, beginning October 12, 1965 and for each day this clerical work is performed by S. Timke, an employee not covered by the scope of the Clerks' Agreement, to continue until such time as the violation is corrected and the work returned to a clerical position. (Claim #1727)

OPINION OF BOARD: In general the facts giving rise to this claim are not in dispute. On October 12, 1965 Carrier established the temporary position of Operator-Clerk at North Randall, Ohio. The position was abolished on December 13, 1965. The incumbent copied freight bills covering carload shipments, verified, stripped and mailed bills to consignees and performed other clerical work as assigned. This much of the factual background is either conceded or clearly established by the record.

The contest, factually, centers on the question of the operating duties of the incumbent. Carrier asserts that the position was established because of increased train orders and that the clerical work was assigned to fill out the eight hour day. Carrier offers as proof of the fact that train order work had increased, the number of hours of overtime worked by the Agent-Operator in June, July and August, 1965. It further offers the lack of overtime on the part of Claimant during the same period as evidence supporting its conclusion that train order work made the operator-clerk position necessary, rather than an increase in clerical work.

The problem with evidence of this character is that it leaves considerable doubt. It may, as Carrier states, prove that the Agent-Operator was overburdened with train order work. However it may also simply show that the volume of clerical work, performed by the Agent-Operator and the incumbents of other regular positions at North Randall, had increased beyond the ability of the persons concerned to handle it. Other possibilities exist. The point is that Carrier has not shown that the position of operator-clerk was required for train order work. It has raised an inference, but since this fact is an essential part of Carrier's defense it was up to Carrier to prove it. It has not done so.

Thus we have a record which clearly shows that a substantial amount of clerical work was assigned to a new position which was created and took over part of the duties of a position covered by the Clerks' Agreement. This very situation, and Carrier's obligation should it occur, is covered in Rule 1(b). It states:

"(b) Should any position or positions now covered by all the rules of this agreement be transferred to other departments or offices, or new positions be created taking over the duties of positions now covered by all the rules of this agreement, such transferred or new positions will continue under all the provisions of this agreement unless otherwise mutually agreed to between the Management and General Chairman or their representatives."

There was, of course, no mutual agreement on this matter. Carrier, by unilaterally establishing a new position and assigning work to it which was a part of the duties of a position covered by the Clerks' Agreement violated Rule 1(b). Rule 1(c), which deals with work incident to the duties of another class or craft, has no application here. The contested work is, by recognition of the parties, not "incident to and attached to the primary duties of another class or craft." It was work normally assigned to, and a part of, a position covered by the Clerks' Agreement. Carrier says it assigned it to the Operator-Clerk to fill out his shift. Whether it could do so in the case of an existing position is not before us. Whether it could do so on the basis Carrier asserts it did is not before us, because Carrier failed to show that a requirement for Train Order work made the position necessary. All that is here is the unilateral removal of clerical work from the Clerks unit and its assignment to another newly created position. The Agreement does not give Carrier that right.

The T-C Division of B.R.A.C. was joined in this dispute. Its submission has been carefully considered by the Board. It supports Carrier's action, based on the ebb and flow principle. However, as we construe the Agreement there is no proper application of that principle to this claim.

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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 violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

E A Killen
Executive Secretary

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