

RATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20715
Docket Number CL-20418

Frederick R. Blackwell

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steam-
(ship Clerks, Freight Handlers, Express and
(Station Employees

(
(Burlington Northern Inc.

STATEMENT OF CLAIM: Claim of the Burlington Northern System Board of
Adjustment (GL-7423) that the Carrier:

(1) Violated the rules of the March 3, 1970 Rules Agreement when they refused to allow Mr. Charles L. Northrup, Crew Clerk, Balmer Yard, Seattle, Washington, to exercise seniority to the position of Chief Clerk, Manpower Control Center, Balmer Yard, Seattle, Washington.

(2) Shall now be required to bulletin the position of Chief Clerk, Manpower Control Center, Balmer Yard, Seattle, Washington.

(3) Shall now compensate Mr. Charles L. Northrup a day's pay at the straight time rate for every Friday, and a day's pay at the time and one-half rate for every Sunday at the rate of the Chief Clerk, Manpower Control Center, commencing July 18, 1972, and continuing until the Violation is corrected.

OPINION OF BOARD: he herein parties raise several procedural issues, but we find it necessary to rule on only two of the issues. We concur with the Employees' objection that the Carrier interposed a time limit defense for the first time in its Submission. Accordingly, such defense shall not be included in our considerations. we also concur with the Carrier's objections that the Employees' Exhibits 10 and 11 were not made part of the handling on the property and were advanced for the first time in the Employees' Submission to this Board. It accordingly follows that these exhibits are inadmissible at this juncture of the case and their contents shall not be considered.

The origin of this dispute is a former Chief Clerk position on the former Great Northern Railway; the position, entitled "Chief Clerk, Seattle Freight," was listed as a Rule 3 (b) position and, as such, was excepted from the promotion, assignment, and displacement rules. On March 3, 1970, the Great Northern and other railway companies merged into the Burlington Northern, Inc., the herein Carrier. The successor to Rule 3, which became effective on the merger date, contains no text but refers to Appendix L which, in pertinent part, reads as follows:

APPENDIX L

"1. (a) There shall be no changes in the rules and agreements ~~heret~~ fore negotiated respectively by the Brotherhood of Railway and Airline Clerks and the Great Northern Railway, the Northern Pacific Railway, the Chicago, Burlington & Quincy Railroad and the Spokane, Portland and Seattle Railway providing for the exception or exemption from the application of certain rules for various employees, positions and departments, except as specifically provided herein.

* * * * *

3.

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(c) All services, duties and functions performed on or before the date of consummation of merger by employees occupying positions encompassed by Rule 3(b) of the Great Northern clerks' Agreement, Rule 2(b) of the ~~CB&Q~~ clerks' Agreement, Rule 1(d) of the Northern Pacific clerks' Agreement and Rule 8(b) of the ~~SP&S~~ clerks' Agreement may thereafter be assigned to positions-which are excepted from the application of promotion, assignment and displacement rules."

One of the effects of the March 3, 1970 merger was the Carrier's decision to abandon its downtown Seattle Freight Office (former Great Northern) and to retain its South Seattle Freight Office (former Northern Pacific); consequently, forty of the downtown employees were transferred to South Seattle and nine to Balmer Yard, the Carrier's major yard operation in Seattle. The Balmer transfer, effected in March 1970, involved the transfer of the position of Chief Clerk, Seattle Freight, and eight clerical positions. Mr. J. L. Storey, the occupant of the position prior to the merger, was also the occupant after transfer to Balmer. The transfer was made pursuant to written notice as provided by agreement, and no objections of relevance here were interposed by the Employees. Later, in September 1971 and March 1972, the Carrier transferred additional clerical personnel to Balmer when it consolidated the Crew Boards at Tacoma and Auburn, Washington, with the Seattle Board at Balmar yard (Manpower Control Center). On or about June 12, 1972, some additional responsibility was assigned to the position of Chief Clerk, and in addition the Chief Clerk was moved from the second floor, Balmer Yard Office, to the first floor on which the Manpower Control Center is located. As a result, under date of July 18, 1972, the Claimant filed the following claim:

"**I wish** to displace Clerk Jack Storey off the Clerical position established on or about June 12, 1972, which' has never been bulletined.

The above position does clerical work such as sorting mail, handling time slips and other clerical work in the Crew Clerks Office at Balmer Yard.

If this claim is denied, I wish to hereby notify that this is a just displacement and claim all difference **of pay**, a straight days pay for Fridays and time and one-half for Sundays until this displacemnet is allowed."

In progressing the claim on the property, the General Chair-
man stated that the basis of the claim was that the occupant of the Chief Clerk position, Mr. Storey, was "performing such clerical work as sorting mail, handling timeslips, and other clerical work;" that the timeslips had previously consumed 98% of the Claimant's work day; and that these duties were **taken** away from the position of the Claimant. The General Chairman also said that:

"At no point has the Organization ever agreed to the establishment of a 3 **(b)** Chief Clerk position in the Crew Office or Manpower Office located on the first floor at the Balmer facility, but only recognizes that there is in existence a 3 **(b)** Chief Clerk position, formerly working and located in the Seattle Agency and subsequently transferred to the Agency located on the second floor of the Balmer Yard facility."

The claim is thus predicated on the allegations that 98% of the Claimant's work was assigned to the position of Chief Clerk on or about June 12, 1972, and that the Carrier established a new 3 **(b)** position unilaterally, whereas such could be done only by mutual agreement. As regards the first allegation, the Employees asserted on the property, and in their Submission, that the handling of **timeslips** constituted 98% of the Claimant's work day and that this **timeslip** work was taken from the Claimant and given to the Chief Clerk position. However, no evidence has been offered by the Employees to support these conclusions and the Carrier has made no admission which serves in lieu of such evidence. **The** only statement from the Claimant himself, his hereinbefore letter of July 18, 1972, makes no reference to any part of the work of his position being performed by the Chief Clerk, much less 98% of his work being so performed.

Also, the Claimant's position was not abolished or materially changed during the period in question, and thus, so far as this record shows, the Claimant performed the same duties before and after this dispute arose. In this state of the record, the first allegation must be deemed to fail for want of proof by probative evidence.

As regards the second allegation, the Employees assert that the work of the 3 (b) Chief Clerk position prior to merger is not related in any way to the work assigned to such position after June 12, 1971. The Employees' Exhibit Nos. 10 and 11 constitute their primary proffer of proof to support this allegation, but, as previously indicated, these exhibits are not admissible because they were not handled on the property. The record contains an internal interrogatory by Carrier (Carrier Exhibit No. 6) which appears to solicit information that would establish whether a new 3 (b) position was established after June 12, 1971. However, the answer to this interrogatory, if any, is not contained in the record. Thus, the only facts of record on whether a new position was established concerns the change of the work location of the position from the second floor, **Balmer** Yard office, to the first floor where the Manpower Control Center is located, and the additional responsibilities assigned to the position after June 12. The transfer from one floor to another and an increase in responsibility **is** consistent with either an affirmative or a negative conclusion on whether a new position was established, so these facts do not constitute probative evidence. Similarly, while the performance of the position's duties after June 12 in an area with a different name designation is somewhat suggestive, this too, without concrete evidence on the specific duties of the position before and after June 12, is **insufficient** to establish that a new position was created. Accordingly, the second allegation also fails for want of proof in that the Employees' admissible evidence of record does not support the allegation and the Carrier has made no admissions which serves in lieu of such evidence.

In view of the foregoing, the claim will be dismissed for failure of proof. This, of course, does not constitute a ruling on the question of whether the Carrier's changes in the **Balmer** Yard Chief Clerk position could be instituted unilaterally.

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

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

Claim dismissed for failure of proof.

A W A R D

Claim dismissed.

NATIONAL ~~RAILROAD~~ ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

G. W. Paulsen
Executive Secretary

Dated at Chicago, Illinois, this 16th day of May 1975.