

RATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22437
Docket Number CL-22300

Louis Yagoda, Referee

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

PARTIES TO DISPUTE: (

(Illinois Central Gulf Railroad Company

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood
(**GL-8462**) that:

(a) Carrier violated the Agreement at Louisville, Kentucky when it established Position No. 108 with starting time other than specified **in** BRAC Rule 29 (a).

(b) Claim was filed in favor of Claimants W. B. Newton, D. M. Blake, **J. A. Bishop, F. M. McAdams, D. L. Thielemann**, and/or their successors for various dates that violation occurs in the amount of \$7.86 per hour for two (2) hours per day, each claimant.

(c) Continuing claim dates and successor claimants to be ascertained by joint check of payroll records.

OPINION OF BOARD: At the **time** of the actions which led to the instant claims, Carrier **maintained** two separate staffs of clerks on the same floor of a building at Louisville, Ky. Organization maintains that although segregated both are in the **same** physical office; Carrier states that they are "at opposite **ends** of the building" on the same floor. Although the parties treat their respective characterizations as significantly favoring them oppositely, we find no way from the record to determine which is correct. It also appears to us that one statement need not exclude **the other** and we do not believe that this is the **dispositive element** in this controversy.

One of these clerks' groupings is that of the "Freight Office," the other, the "Yard Office." For many years, going back to a time when it was located in a separate structure from the Freight Office in a different part of the city and continuing after they moved into one building with the Freight clerks, from 1970,

the Yard Office clerks worked eight hours per shift in a continuous operation with three shifts changing at 7:00 a.m., 3:00 p.m. and **11:00** p.m., pursuant to **Rule** 28(a) supplemented with rest day fill-ins to complete the 7-day week.

During all of this period, the Freight Office clerks worked on a single shift, Monday to Friday, **8:00** a.m. to **5:00** p.m., with unpaid lunch recess between noon **and** 1:00 p.m.

On March **4**, 1975 Carrier issued a notice **abolishing** Utility Clerk Position No. **108** which had been occupied on a Thursday through Monday **workweek**, 3:00 p.m. to 11:00 p.m. as 'part of the continuous operation of the Yard Office clerks group. Relief Position R-2 for that shift was also abolished by the **same** announcement, effective same date.

At the **same time**, by the same announcement, Carrier also established effective the same date, a new position of "**IBM** Clerk No. **198**" to work **in** the Freight Office with assigned hours of noon to 8:00 p.m., **with** certain stated duties and "other clerical duties as assigned."

Carrier **states** - and is not probatively challenged thereon - that this move was due to a paucity of work for Position No. **108** among Yard Office duties and for the more efficient utilization of an additional position in the Freight Office functional **grouping**.

The parties are in disagreement concerning the extent to which the incumbents in the **new** position (counting the relief days claimants and extras) have been and are doing Yard Office work while employed in **the purported** Freight Office grouping. Organization contends that the purported abolishment of one position and the establishment of another does not have functional reality **inasmuch** as the holder of the new position is doing work largely indistinguishable from that **normally** and appropriately assigned to the continuous operation Yard Office **employees**.

Because of this, Organization contends that those assigned in the new positions should be regarded as **covered** by Rule 29(a).

Rule 29 states:

STARTING TIME

(a) Where work is performed covering the twenty-four hour period, **the starting** time of each shift will be between 6:00 a.m. and 8:00 a.m., **2:00 p.m.** and 4:00 p.m., and **10:00 p.m.** and **Midnight.**

(b) Wherever possible consistent with **servicerequirements**, the parties will cooperate to minimize the number of assignments beginning or ending between Midnight and 6:00 a.m.

In Organization's view, Carrier's Louisville, Kentucky clerical operations are at a location "where **work** is performed covering the **twenty-four** hour period" and the work of the "**new**" Position No. 108 is of the type and nature performed on a **twenty-four** hour **basis by** the three shifts at such location. Appropriate remedy is regarded as payment of time and one-half rate of pay for the two hours of 'noon until 2:00 p.m., the latter the regular starting time **of the** second shift' in accordance with **Rule 33(a)** which provides premium pay at that rate for "service performed **in advance** of, **but continuous with, regular** work period."

Carrier concedes that some part of the day's work of the **new Position** No. 108 in the Freight Office Was spent on **functions** of a kind done by Yard Office employes - at first, the first 3 hours of the last half of the shift, then all of the **last** 4 hours. It concedes, too, that there has always been **some contact with** and involvement in Yard Office work **by Freight** Office employes, but because of this, regards the subject situation as no different **from** that which was always recognized and accepted by the parties. But it contends that there has been and continues **to be** a basic and **predominant** difference **in** functional character **between** the two groups'. To this **must** be added the established fact that Yard Office clerks' work has an around-the-clock operational identity, governed by the starting time limitations imposed for such by **Rule 29(a)**, distinct from the Freight Clerks' conventional daily operation.

In Carrier's view, to prevail in this claim, Organization would have to show that **Freight Office work** is the **same** class of work **done** by **employees** who relieve each other **on a continuous** basis. It regards as contrary to such joint grouping the simple fact that Freight Office jobs, as a **class** of work, are not continuous, **inasmuch** as they are not relieved on second or third shifts,

As **an example** of the **parties' mutual recognition** of the distinction between the two groupings, Carrier includes in its exhibits a **showing** of a position of Assistant gate Clerk advertised three separate **times** with a starting time for Freight Office clerk which would **not have** been proper if that office were subject to **Rule 29(a)**, in **line** with **Organization's** present position, bnt no protest was received. (**Organization responds that this was a voluntary exception granted on the basis of its being an "isolated case".**)

Finally, confronting the fact that the position in question encompasses, for part of its workday, **some** work of a kind that **is** done by **the continuous** operation Yard Office, in addition to the Freight Office kind not subject to Rule 29(a), Carrier contends that the fact that at each day's starting **time** of the position, the work performed is freight work, should be controlling in removing the work **from governance** by Rule 29(a). Yard work is begun at **3:00 p.m.**; said time falls **within** the **permissible starting times allowed** in 29(a).

In the face of the clear distinctive character recognized **wer many** years by both parties - both at **separate** locations **as well as at the same** location - the Board has not been **shown any persuasive reason why an employe working in the group that is and** always has been operated **on a** regular daily workday basis, **should** now **have one** of its staff **members** treated as if he were **in another group** - one that works on an around-the-clockbasis.

The fact that the continuous operation Yard Office crew has been diminished by one and the daily operation Freight Office crew **has** had one added to **it**, does not alter the separateness of **these** operations or cause **Rule 29(a)** to be applicable to the latter.

The fact that the new Freight Office position does some work of a Yard Office nature does not cause the new Freight Office **employe** who works on a daily basis to become subject to a rule that applies to round-the-clock shift **employees**, especially in view of the showing here that there has always been **some** overlap of functions and a general scope rule that does not refine clerical functions into distinctions between the two groupings.

We presume an inference is sought to be made here that there has been some **manipulation** by management to avoid conformance with 29(a). But, so far as we can determine from the record, the decision for the re-shuffling of these two positions was a permissible and legitimate exercise of managerial judgment based on genuine buainass needs and not a bad faith maneuver to deprive any **employe** of benefits.

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.

A W A R D

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 15th day of June 1979.