NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 23400
THIRD DIVISION Docket Number CL-23163

Arnold Ordman, Referee

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-8898) that:

1) Carrier violated, and continues to violate, the Clerks' Rules Agreement at Chicago, Ill. when it abolished Position No. 23030, Programmer, and arbitrarily and unilaterally assigned the work normally attached thereto to an employe outside the scope and application of the Clerks' Agreement.

2) Carrier shall now be required to return the duties and work herein described to a position under the scope and application of the Clerks' Rules Agreement.

3) Carrier shall further be required to compensate employe W. S. Wronskl an additional eight (8) hours at the pro rata rate of Position No. 23030 retroactive to November 21, 1977 and continuing until the violation is corrected.

OPINION OF BOARD: On November 11, 1977, Carrier abolished 16 positions, one of which was Programmer Position No. 23030, effective November 18, 1977. Position No. 23030 was a position covered under the scope and application of the Clerks' Roles Agreement. Claimant W. S. Wronski, who holds a seniority date of June 28, 1954 In District No. 1, was the regular holder of Position No. 23030 prior to its abolition. Upon Its abolltlon, Wronskl exercised his seniority to take Programmer Position Ho. 20050 in accordance with applicable schedule rules. Because Position No. 20050 carries or pays the same rate of pay as Position No. 23030, Wronskl suffered no loss of earnings as a result of the transfer of positions.

The foregoing facts are undisputed. Organization asserts, however that Carrier, on November 16, 1977, established a new position of Junior Systems Analyst, a position not covered under the scope and application of the Clerks' Rules Agreement. Organization further asserts that Carrier arbitrarily and unilaterally assigned a new employe to the newly-created position and assigned to that employe duties of Position No. 23030.

Carrier, for its part, asserts that no work of Position No. 23030 was transferred to an employs outside the scope and application of the Clerks' Agreement. According to Carrier, the remaining duties of abolished Position No. 23030 were transferred to and absorbed by Programmer Position No. 20050; as to which Wronski exercised his seniority, and Programmer Position No. 3040. In addition, Carrier asserts that no new position of Junior Systems Analyst was established on November 16, 1977; Instead, an employe was hired on November 6, 1977 to fill a vacancy resulting from the resignationof an Individual not covered by the BRAC Agreement.

As the Claim reveals on its face, Organization seeks return of the challenged work and duties and asks for compensation to Claimant Wronski attributable to the asserted violation. In this connection, Organization invokes the Scope rule of the Agreement providing in Rule l(f) that:

> "Positions within the scope of this agreement belong to the employees covered thereby and nothing in this agreement shall be construed to permit the removal of positions from the application of these rules, except in the manner provided in Rule 57."

Organization also invokes Memorandum of Agreement No. 25 which provides for the establishment of the Seniority District and the establishment of the positions relating to the clerical work in such district. The Memorandum further provides that positions of a title classification not specifically listed In the Memorandum of Agreement shall not be used to perform clerical work in the District.

Carrier resists the claim on two principal grounds: (1) that Organization has not met the burden of proof imposed upon it to establish that the work of abolished Programmer Position No. 23030 was transferred to an employe outside the scope and application of the Clerks' Agreement; and (2) that, in any event, inasmuch as Claimant Wronski has been fully employed and under pay at a rate of pay equal to or in excess of the rate of pay for abolished Position No. 23030, the amount of additional pay embodied in the claim herein would constitute a penalty payment not provided for in the Agreement and beyond the authority of the Board to grant.

The burden of proof that Carrier wrongfully transferred the work of Programmer Position No. 23030 to an employee holding a position not covered under the scope and application of the Clerks' Agreement plainly falls on Organization, the moving party herein. See Awards 14125 (Hamilton); 14155 (Hall); 14682 (Dorsey); 19916 (Hayes).

Organization asserts, and Carrier denies, that such a transfer has occurred. It is Incumbent upon Organization, therefore, to furnish substantiating evidence adequate to support its assertions.

Guided by this criterion, we have examined the record with scrupulous care. That examination satisfies us, and we find, that adequate evidence is lacking in this regard and that Organization has not sustained Its burden of proof. The emphasis both of the Scope rule and of Memorandum of Agreement No. 25 Is upon the preservation of "positions," not the preservation of "work." Organization cites authorities to support Its thesis that the terms "position" and "work" are synonymous. Analysis of these authorities would be superfluous here. Suffice It to indicate that in terms of the present dispute, as revealed by the record, the two terms are not synonymous and numerous Awards of this Division, which invoke the same parties and rules as are Involved in the instant dispute, have so held. See Awards 8256 (Bakke); 11755 (Hall); 12148 (Englestein) I.2841 (Hamilton); 14064 (Rohman); 17754 (Ellis); 19255 (Cull); 19034 (Cull); 22685 (Sickles); 22800 (Larney). The circumstance that a few similarly described duties can be found among the manifold duties of a Programmer Position on the one hand and a Junior Systems Analyst on the other falls short of establishing an arbitrary and unilateral assignment of the duties of the former to the latter. Rather, Organization must establish here, on the basis of tradition, historical practice and custom, the exclusivity of its claim to the performance of the claimed work. See Awards already cited. This Organization hab failed to do and the Claim will be denied.

Disposition of the Claim on this groundmakes consideration of other defenses unnecessary.

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 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

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 6th day of October 1981.