

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24070
Docket Number CL-24243

George S. Roukis, Referee

PARTIES TO DISPUTE: { Brotherhood of Railway, Airline and Steamship Clerks,
Freight Handlers, Express and Station Employees
(Elgin, Joliet and Eastern Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9522) that:

1. Carrier violated the effective Clerks' Agreement when, effective July 3, 1980, It abolished certain positions at South Chicago, Illinois and subsequently, re-instated these positions under different titles for the purpose of evading the application of the Agreement Rules;

2. Carrier shall now compensate the following named senior furloughed employees and/or their successor or successors in interest; namely, any other employee or employees who have stood in the Status of Senior Furloughed Employee and as such were adversely affected; for eight (8) hours' pay at the pro rata rate of the position set forth below for each and every Monday through Friday hereinafter listed:

<u>Claimant</u>	<u>Position No.</u>	<u>Inclusive Dates Claimed</u>
Ms. D. Burgess	GT-480	July 22 through August 17, 1980
Ms. D. Chyzy	GT-266	July 14 through July 23, 1980
Mr. H. Williams	GT-195	July 21 through July 28, 1980
Mr. J. D. Hairston	GT-550	July 15 through July 30, 1980
Ms. D. Caponigro	GT-552	July 12 through August 4, 1980
Ms. K. Jones	GT-194	July 14 through July 24, 1980

OPINION OF BOARD: South Works, which is one of the larger steel making facilities of U. S. Steel Corporation is located on Carrier's line of road at South Chicago, Illinois. Except for some limited interchange service in the immediate area, the primary service performed by Carrier at this situs is within the South Works facility.

On June 16, 1980 Carrier posted bulletin No. 216 advising that twenty three (23) of the twenty six (26) clerical positions at this location would be abolished, effective June 29, 1980. Subsequently Carrier abolished every clerical position, including the three (3) extra board positions, but retained the Chief Yard Clerk's position (GT-191). As such, except for this latter position, none of the original positions abolished existed after the effective abolishment date.

The U. S. Steel Corporation had announced that It would close this facility for two (2) weeks, beginning June 30, 1980 and noted that it was uncertain as to when It would resume operations. As activity at this facility steadily improved during July, 1980, Carrier bulletined and assigned six (6) extra board positions and three (3) regular positions. Later It bulletined six (6) more regular positions and used the newly assigned extra board employees to fill these positions, pending assignment by bulletin.

The Organization argues that Carrier violated the controlling Agreement since it did not bulletin the latter six (6) positions as new positions, follow assignment procedures and return furloughed employees to service. It contends that under Rule 19(g) a senior employee in service may bid on and be assigned to the new position, which would create a vacancy in his former position, thus permitting the senior furloughed employee to bid and be assigned to the vacant position. Carrier argues that it complied with the Agreement, since it abolished the positions in accordance with the controlling Agreement and established the extra board positions pursuant to the requirements of the June 8, 1979 Extra Board Agreement. It asserts that the extra board employee, selected on the basis of seniority, were used to fill the short vacancies on the positions designated GT-480, GT-266, GT-195, GT-550, GT-552 and GT-194 and the aforesaid positions were properly bulletined. It avers that the rates of pay remained the same and none of the work in these positions was allocated to other employees outside the scope of the Agreement.

In reviewing this case, we find that Carrier properly abolished the clerical positions on June 29, 1980 consistent with the applicable provisions of the controlling Agreement. The economic exigencies at the South Works facility prompted Carrier to reduce its forces and we have no evidence that it acted in bad faith when it effectuated these reductions. The operations at this facility were under the control of the U. S. Steel Corporation and it was difficult for Carrier to determine accurately its force needs. Carrier advertised nine (9) positions on July 5, 1980 in anticipation that It would have a sufficient work force to provide required services, pending resumption of operations. These positions were properly bulletined and assigned. Six (6) were extra board positions and three (3) were regular clerical positions - (GT-192, GT-193, GT-551). The six extra board positions were assigned to one senior bidder and five senior furloughed employees who were recalled in accordance with Rule 19. As it became apparent that economic recovery was more sustained at this facility, Carrier bulletined six (6) clerical positions. The titles of the positions and dates of bulletining are as follows:

July 18, 1980	GT-194	Yard Clerk and Clerk (WAM)
July 18, 1980	GT-266	Janitor
July 23, 1980	GT-550	Input/Output Technician
July 23, 1980	GT-195	Yard Clerk and Clerk (WAM)
July 30, 1980	GT-552	Input/Output Technician
August 12, 1980	GT-480	Yard Clerk and Clerk (WAM)

Carrier argues that it was permissible to use the extra board employee on these positions, prior to the date of bulletin, since they were filling short vacancies, which didn't have to be bulletined. In addition, Carrier asserts that it was permissible to use the extra board employees to fill the bulletined positions, pending assignment by bulletin. We agree with Carrier on the latter point that it was proper to use the extra board employees to fill the bulletined positions, but we disagree that prior to the aforementioned bulletined dates, there were short vacancies. Since there could not be a vacancy without a position, the six (6) extra board employees could not fill short vacancies. To be sure, Rule 11 permits Carrier to fill vacancies of less than twenty-five calendar days duration, but a position must exist before a vacancy can be declared. This would mean a new position bulletined pending assignment as well as an existing position vacated by an employee. Since there were no specific identifiable short vacancies before the six (6) clerical positions were formally bulletined, we will uphold the instant claim only to those days prior to the dates the six (6) regular clerical positions were bulletined. When these positions were bulletined as permanent positions, it was not improper to use the extra board employee to fill them pending assignment. We do not find that Carrier re-instated these positions under different titles for the purpose of evading the application of the Agreement Rules.

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 or the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was violated.

A W A R D

Claim sustained in accordance with the Opinion.—

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: Acting Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 14th day of December 1982.