

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award Number 24580
Docket Number CL-24339

Herbert L. Marx, Jr., Referee

PARTIES TO DISPUTE: ((Brotherhood of Railway, Airline and Steamship Clerks,
{ Freight Handlers, Express and Station **Employees**
(Seaboard Coast Line Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(**GL-9512**), that:

1. Carrier violated the Agreement when on July 18, 1980, it abolished a contract PBX position at Richmond, Virginia, and transferred the duties to employes not covered by the Agreement, and

2. As a consequence thereof, Carrier shall compensate **Mrs. Jane Gallion** eight (**8**) hours at the PBX rate beginning July 21, 1980, and each subsequent date, less compensation received. In addition, compensate the senior available **unassigned** employee eight (**8**) hours beginning July 21, **1980**, and each subsequent date.

OPINION OF BOARD: This dispute **concerns** assignment of employes to work on the PBX telephone switchboard in the General Office Building of the former Seaboard Air Line Railroad in Richmond. After the merger of the Seaboard Air Line Railroad and the Atlantic Coast Line Railroad, the switchboard continued to be operated by excepted employes. Under the December 16, 1972 Agreement between the Carrier and the Organization, the parties reached accord as to coverage of the switchboard positions (among others) for the future. The Agreement reads in pertinent part as follows:

"2. Positions on the list attached and identified as Attachment 'A' shall **be** placed under coverage of the Clerks' working agreement. on full **or** partial basis as indicated, when they are vacated by the present incumbents, whose names are shown thereon. **Upon** such occurrence, each position filled shall be reviewed by the parties hereto; evaluated, re-rated and/or retitled to establish proper rate **which** shall be commensurate with comparable contract positions performing similar duties; if there are such existing positions. The work of positions appearing on **Attachment 'A'** which are to become fully covered when vacated by the present incumbents shall, if continued, be performed by positions fully covered by the agreement, unless otherwise agreed."

Upon the occasion of one switch board position becoming vacant, Claimant Jane **Gallion** exercised seniority to the vacancy and served in the now fully covered position.

On June 2, 1980 **Gallion** requested transfer to the Freight Claims Department, and this request was granted on July 21, 1980. This new position (filling a temporary vacancy) ended in August 1980, and **Gallion** initially requested return to her original seniority district. Subsequently, however, she advised the Carrier on September 17, 1979 that she 'wished to be considered furloughed' from the Seniority District of the Freight Claims Department.

Returning now to the switch board **positions**, they were as follows on July 18, 1980 just prior to **Gallion's** departure:

7:30 a.m. to 4:30 p.m. -- Incumbent, Doris Napier,
Excepted Position

8:00 a.m. to 5:00 p.m. -- Incumbent, J. **Hudson**,
Excepted Position

9:00 a.m. to 6:00 p.m. -- Incumbent, **Gallion**, Fully
Covered Position

With **Gallion's** voluntary departure, the Carrier determined that two full-time switchboard operators would be sufficient (coincident with the continuing decline in number of telephones in the building).

The hours for Napier remained unchanged, **but** those for **Hudson** were changed from 8:00 a.m. - 5:00 p.m. to 9:00 a.m. - 6:00 p.m.

The Organization makes two alternate arguments: first, that the 9:00 a.m. - 6:00 p.m. position was a fully covered one and must continue to be so by filling it with a fully covered employee rather than an excepted employee; second, in the alternative, the switchboard work from 5:00 p.m. to 6:00 p.m. was performed by a fully covered employee and cannot revert to an excepted employee.

There **can** be no dispute that the positions as Switchboard Operator are covered by the Organization. The only exception provided by the **December 16, 1972 Agreement** is the preservation of rights to excepted employees incumbent in the positions (of which there remained two in July 1980). Further, there can be no dispute that the Carrier may properly determine the number of employees it requires as Switchboard Operators. The Board may not require the Carrier to have more than two full-time Switchboard Operators beginning July 21, **1980**. To achieve the level of two operators, it was unnecessary to displace any employee -- owing to **Gallion's** voluntary move from the position. The rights of the two excepted incumbents vs. fully covered incumbent **Gallion** are not at issue.

Given the absence of any displacements, does the fact that one of the two Switchboard Operators is now assigned to 9:00 a.m. to 6:00 p.m. (Gallion's former hours) require that position to be given to a fully covered employe? Even more narrowly, is the Carrier required to use a fully covered employe between the hours of 5:00 p.m. to 6:00 p.m., formerly worked by a fully covered employe?

The Board concludes that these questions must be answered in the negative. The work of all switchboard positions is identical here, even if performed at slightly different hours. If the Carrier determined to retain three operators upon Gallion's departure, the replacement would, of course, be a fully covered employe. This, however, is not what happened. Upon Gallion's voluntary departure, the Carrier exercised its right to retain only two positions. The December 16, 1972 Agreement preserves the rights of the two incumbent excepted employes. That hours of work were modified by one hour does not change the nature of the work involved.

Except for retention of the original incumbent excepted employees, the Organization achieved full coverage of the switchboard positions. Gallion, having left voluntarily and having later sought furlough from her new position, has no claim to return. The assignment of a fully covered employe in place of one of the two incumbents is barred by the Agreement. The fact that the schedule of one of the two operators was changed by one hour is without significance.

With these conclusions, the Board sees no need to examine many other arguments raised by the Carrier and the Organization.

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 Employe 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.

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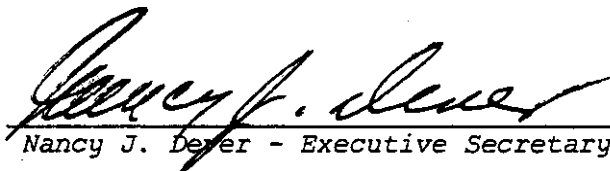
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Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois this 15th day of December 1983.