NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 24752

THIRD DIVISION Docket Number CL-24758

Robert Silagi, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks, (Freight Handlers, Express and Station Employes
(
(Baltimore and Ohio Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9634) that:

(1) Carrier violates the Clerk-Telegrapher Agreement in effect between the Parties when, on dates of December 8, 17, 18, 23, 24, 1980 and January 5, 1981, and continuing, it causes and permits employees not covered by said Agreement to perform the Clerical work of maintaining responsibility, control, distribution, return-of, records, and the electrical-charging of radio transreceiver units at Grafton, West Virginia, and

(2) As a result of such impropriety, Carrier shall be required to compensate Mr. G. A. Reed, Grafton, West Virginia, one (1) day's pay ($76.37) for each date of December 8; 17, 18, 23 and 24, 1980, and

(3) That Carrier shall be required to compensate Messrs. G. E. Shelton, P. W. Sinsel and G. A. Reed, Grafton, West Virginia, one (1) day's pay ($78.93) each, around the clock, commencing January 5, 1981, and continuing each subsequent date until such work is returned to the Clerical Craft.

OPINION OF BOARD: Since 1950 the Carrier has used hand-held radios in various aspects of its operations, particularly in yards where the yard craws use the radios when switching cars to maintain contact among the engineer, yard foreman and brakeman. To prevent loss of these expensive units Carrier instituted a system of recording their issuance and return. On November 18, 1977 a Special Notice was published giving instructions relating to radios in the Grafton Terminal. Briefly summarized the notice provides that the radios will be kept in the clerk's office and will be issued by the clerk on duty. The employe receiving the radio will sign the check-out card indicating receipt of the unit. The clerk who issues the unit will initial the employes' signature. Upon returning the unit, the clerk will check the radio back in and initial the check-out card.

This arrangement continued for about three years. In 1980 Carrier established a new Terminal Services Center in Grafton. On December 12, 1980, Carrier issued a bulletin abolishing all clerical positions in Grafton Yard. As a result thereof, all clerks working in the Grafton Yard began working in the new Terminal Services Center as of January 5, 1981. The work of issuing and receiving the radios was eliminated altogether. Instead, the yard crew members drew their own radios and signed and dated the check-out cards themselves. The Yardmaster then initialed the form as a witness. When the radios were returned a similar procedure was followed.

In December 1980, on five different occasions the Terminal Trainmaster initialed check-in or check-out cards when radio units were taken or returned by trainmen. Subsequent to January 4, 1981, the Yardmaster initialed the cards for issuing and receiving radios. The Organization asserts a violation of its Agreement on the 5 dates in December 1980 and a continuing violation beginning January 5, 1981.

The Organization's position is that since 1977, Clerks have exclusively performed the work of maintaining responsibility, control, distribution, return, etc., of radio units in Grafton Yard. Effective January 5, 1981, such work was transferred to Yardmasters who are not covered by the Organization's agreement. Even after abolishment of clerical positions in Grafton Yard, clerical positions remained in existence at the location where the work of the abolished positions was to be performed. The Organization asserts that such transfer violates the Scope Rule.

The Carrier's position is that the Organization failed to sustain its burden of proving that the work of issuing portable radios belongs exclusively to its members. Without prejudice to the aforesaid position, Carrier alleges that nothing in the agreement gives clerks exclusive right to issue portable radios. Moreover crafts other than clerks have performed such work in the past. In Carrier's view the Special Notice is only an informational bulletin and not an agreement.

The relevant parts of the Scope Rule are:

"Assignment of Work:

Rule l(b) when the assignment of clerical in an office, station, warehouse, freight house, storehouse, or yard, occurring within a spread of ten (10) hours from the time such clerical work begins, is made to more than one (1) employee not classified as a clerk, the total time devoted to such work by all employees at a facility shall not exceed four (4) hours per day.

Interpretation of Rule l(b).

The word 'employee' in Rule l(b) means one in the employ of this Company, whether coming under the Scope of this Agreement, another agreement, or outside the Scope of any agreement.

Rule l(c) when a position covered by the Agreement is abolished, the work assigned to same which remains to be performed will be reassigned in accordance with the following:

(1) To position or positions covered by this Agreement when such position or positions remain in existence at the location where the work of the abolished position is to be performed.

(2) In the event no position under this Agreement exists at the location where the work of the abolished position or positions is to be performed, then it may be performed by a Yardmaster, Foreman, or other supervisory employee provided that less than four (4) hours' work per day of the abolished position or positions remains to be performed; and further that such work is incident to the duties of a Yardmaster, Foreman, or other supervisory employee."

At the outset the Carrier argues that a general scope rule cannot support *a* claim to specific work and that in order to prevail, the Organization must prove that Clerks have traditionally, historically and usually performed the disputed work on a system-wide basis. In this connection the Carrier showed that yardmasters and other employes not covered by the Organization's agreement performed the same duties at other yard offices in its system. The Organization did not dispute such *allegations* but stated *that* it does not claim absolute exclusivity on a system-wide basis. The Organization does assert, however, that the employes subject to its agreement have exclusively performed such work in the Grafton yard. Since system-wide exclusivity is not a disputed issue the effect of the Special Notice must be considered.

The Special Notice *consists* of *instructions* emanating from the Terminal Trainmaster regarding the manner in which radios will be issued. These instructions place that responsibility upon "the Clerk on duty". From these instructions the Organization infers that such functions *are* and remain the exclusive duties of clerks. The difficulty with this argument is that a bulletin of instructions, unilaterally issued by a supervisory employe, does not rise to the level of a collective bargaining agreement Award 16544 (Devine); Award 24492 (Silagi). Certainly, it cannot be maintained that the Special Notice was negotiated and placed in the Agreement by the parties in good faith. While we find that the Special Notice assigned to clerks the exclusive right to the disputed work at Grafton Yard, said right, could, however, be rescinded at any time. Upon the abolishment of all clerical positions in the Grafton Yard, the instructions contained in the Special Notice were effectively rescinded.

As stated above all clerical positions were abolished in the Grafton Yard and the clerks formerly employed there were transferred to the newly established Grafton Terminal Service Center. The record is silent as to the physical location of the two facilities. The Organization's contention that the yard office is part of or contiguous with the Terminal Service Center is unsupported by evidence. Under these circumstances this Board cannot find that clerical positions "remain in existence at the location where the work of the abolished position is to be performed". It is unnecessary to decide whether Yardmasters "issue" radios as contended by the Organization or merely witness an event as asserted by Carrier. It is uncontested that said work performed by Yardmasters is minimal, is incidental to their regular duties and consumes far less than 4 hours a day.

A close review of Rule l(b) and Rule l(c)(l) and (2) convinces us that none were violated when the Carrier assigned the disputed work to yardmasters. The claim must therefore be denied.

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: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 30th day of March, 1984.