

NATIONAL **RAILROAD** ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25466
Docket Number CL-25407

Herbert L. Marx, Jr., Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station **Employees**
PARTIES TO DISPUTE: (
(Bessemer and Lake Erie Railroad

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(**GL-9818**) that:

"(1) Carrier violated the effective Clerks' Agreement when on and after January 1, 1982, it permitted an outside Company to perform **work** in connection with **major** medical Claims which is work coming under the scope of the Clerks' Agreement ;

(2) Carrier shall now compensate the senior furloughed **employee** eight (8) hours' pay at the straight time rate of the former **position** of Salary Payroll Clerk commencing sixty days prior to June 18, 1982, and continuing for each and every workday thereafter that a like violation occurs.

OPINION OF BOARD: The Carrier maintains various types of insurance coverage for eligible salaried employees through the United States Steel and Carnegie Pension Fund (the *Pension Corporation.). **Prior** to January 1, 1982, the Pension Corporation contracted certain insurance plans to the Metropolitan Life Insurance Company. The Insurance company, in turn, arranged to have major medical Claims processing work performed by the Carrier. The Carrier assigned such **work** to one of two Salary Payroll Clerk positions. There is no dispute that such work was properly assigned under the Organization's Scope Rule (Rule 1) and under the bulletin establishing the position.

As of January 1, 1982, however, the Pension Corporation ended its contract with Metropolitan and assigned the major medical benefits plan to the Aetna Life Insurance Company. Aetna, in turn, determined that Claims processing would be performed by **the** Insurance company, rather than having such work assigned to the Carrier. The assigned Salary Payroll Clerk continued to be occupied in January 1982, in completing the transfer of responsibilities. The Clerk remained in the position, performing other duties, until May 14, 1982. Thereafter, on June 18, 1982, the Organization raised the Claim here under review.

The Organization refers in particular to Rule 1 (d), which states:

"(d) Positions or work **coming** 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 or work from the application of these rules, except by agreement between the parties signatory hereto;. . . ."

Under the facts as described here, the Board finds that the restrictions of the Scope Rule are not applicable. The Carrier has convincingly demonstrated that the processing of major medical Insurance Claims is under the control of the Insurance company responsible for the coverage. The selection of the Insurance coverage is under the control of the Pension Fund, not the Carrier. When the Pension Corporation changed Insurance carriers, the new Insurance company determined to process its own Claims. There is no showing that the Carrier participated in any manner **in** the change of procedure. The **"work"**, in fact, was assigned **at** the discretion of the Insurance company. Thus, **"the removal of work"** prohibited by Rule 1 (**d**) was not within the Carrier's control or by its initiative.

In view of these findings, the Board need not resolve the procedural question as to whether the Claim was properly raised by the Organization under Rule 21 (**b**), involving **"continuing violation"** Claims, rather than Rule 21 (**a**), requiring presentation within 60 days of the **"date of the occurrence"**, which the Carrier argues should be applicable here.

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 R 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 23rd day of May 1985.