

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25487
Docket Number U-25395

M. David Vaughn, Referee

(Brotherhood of **Railway**, Airline and **Steamship** Clerks
(Freight Handlers, Express and Station **Employees**

PARTIES TO DISPUTE: (

(Bessemer and Lake Erie Railroad **Company**

STATEMENT OF CLAIM: Claim of the System Committee of **the** Brotherhood (GL-9816)
that:

1. Carrier violated the effective Clerks' Agreement when, effective August 16, 1982, it failed and refused to bulletin and award the position of Receptionist, Office of the **Manager**, Real Estate, but rather required and/or permitted an outsider, having no employment relationship with the Carrier and others outside the scope of the Agreement to perform the duties thereof;

2. Carrier shall now bulletin and award this position and shall compensate the successful applicant eight (**8**) hours' pay at the straight time rate to be established through negotiations, in addition to any other earnings, commencing on August 16, 1982, and continuing thereafter for each and every day that a like violation occurs.

OPINION OF BOARD: The Agreement between the Carrier and the Organization dated July 22, 1969 establishes a "**Special** Positions List No. 1" (the "**List**"). Positions on the List are exempt from the Agreement so long as the incumbent who occupied the position at the time the position was added to the list continues to occupy it. On February 28, 1980, the parties amended the Agreement and the List to include the position of Receptionist, Office of the **Manager**, Real Estate (**the "Receptionist position"**). At the time of the amendment, the Receptionist position was occupied by Ms. Margaret **McKenna**, and it was to be exempt from **the** Agreement for so long as she occupied the position.

The duties of the Receptionist were to receive visitors to the offices of the Real Estate Department, announce them to the **Department** officials, and control their access to the offices. She also performed general clerical work (typing, filing etc.) for the Department and, on an as-available basis, performed duties for the Treasurer's Office, such as stuffing envelopes.

The Scope Rule of **the** Agreement provides in relevant part that:

"(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..." (emphasis added).

The **Agreement** further provides that:

"**Rule 36(c)**. When a position covered by this **agreement** is discontinued. any substantial volume of work previously assigned to such positions which remains to be performed shall **be** assigned to a position covered by this agreement..." (**Emphasis** added).

On August 1, 1982, the Incumbent in the Receptionist Position, Ms. **McKenna** announced her retirement, to be effective on August 31, 1982. On August 16, 1982, Ms. McKenna went on leave pending retirement, and the Carrier blanked her position. Ms. **McKenna's** leave coincided with the Carrier's move of its Headquarters to a new building which contained all the offices of the Carrier as well as those of another Carrier also owned by Carrier's Parent. The physical layout of the new building was much different than the Carrier's former headquarters, and included a centralized security and reception system. The Real Estate Department no longer had a separate entrance.

When Ms. **McKenna** retired, the Carrier concluded that the Receptionist position was no longer necessary at its new location and abolished it. The access and security duties for the new building, a part of which had been performed by Ms. McKenna at the former location, were assigned to and performed by a Railroad Policeman employed by another, related Carrier. The typing and filing work formerly performed for the Real Estate Department was assigned to other employees covered under the Agreement. The work for the Treasurer's Office, which had been performed by Ms. McKenna on an as-available basis, was assumed by Employees of the Treasurer's Office not covered by the Agreement.

The Organization filed with the Carrier a claim that the work of the Receptionist belonged to **Employees** covered by the Agreement. that the position should be posted, bid for, and filled in accordance with the Agreement, and that the successful bidder should be compensated for all days the position was not filled and its duties performed by non-covered Employees. The Carrier denied the claim initially and on **appeal, and** it was brought before the Board.

The Organization argues that, since the duties of the Receptionist position continued, the position was not properly discontinued by the Carrier and that it must, under the Agreement, have been posted and filled. The Organization argues further that Rules 1 and 36(c) require, in any event, that work performed by a previously-covered position which remains in effect following discontinuance of that position continues to belong to employees covered by the Agreement. As a result of the Agreement of the parties with respect to the List, the position which the Incumbent had occupied, and the work assigned to the position, became subject to the Agreement, upon her vacating the position. The Organization argues, therefore, that operation of the Agreement in the instant situation required that the remaining work be performed by a covered Employee.

The Organization argues in support of its position that the work of the Receptionist position, **or** a substantial part thereof, continues to exist at the new Headquarters location. It points out that a non-covered Employee now receives visitors, announces them, maintains an access log, and controls access to the Carrier's Officers, all of which were a part of the work performed previously by Ms. McKenna.

The essence of the Organization's argument is that substantial duties of the Receptionist position remain to be performed and are performed, although in a different form, at the new Headquarters building. The Organization argues that the security duties performed by the Policeman include the reception work formerly performed by Ms. McKenna. It concludes, therefore, that the Carrier's actions are in violation of the Scope Rule.

The Carrier asserts by contrast, that the duties of the position no longer exist to be performed. The Treasury Department work performed by Ms. **McKenna** was on an as-available basis and was not substantial. The clerical work has been assigned to covered Employees, and the Receptionist duties themselves, in the Carrier's view, no longer exist, since there is no separate access to the Real Estate Department and since the duties performed by the Policeman are different than those which had been previously performed by Ms. **McKenna**: the Policeman is armed and prepared to use physical force to maintain security and is responsible for security for, as well as access to, the entire building, not just the Real Estate Department.

The Carrier points out that the security and access duties now performed by the Policeman for the entire building were previously performed by the Security Guards in the lobby of the previous offices. The separate access to the Real Estate Department and the Reception duties in connection with that access no longer exists. To the extent that any such work might remain, it is not substantial. The Carrier argues that there is not, in any event, sufficient work to support a position and that an Award in the Organization's favor would, therefore, constitute a penalty for the Carrier and a windfall for the Organization.

Disposition of the arguments with respect to non-reception duties of the Receptionist position is straight-forward. The record does not indicate that the Receptionist position's work for the Treasurer's Office was "substantial" within the meaning of Rule 36(c); they appear to have been, as the Carrier characterized them, "fill-in" work. They do not appear to warrant retention of a position, or any substantial part thereof, in order to ensure that they are performed.

It does not appear to be contested that the clerical duties of the Receptionist position were assigned to Real Estate Department **Employees** covered by the Organization's Agreement with the Carrier. The Organization does not assert that the volume of work assigned to the other, covered positions is in excess of the ability of the Incumbents in those positions to perform. There is no general obligation on the part of the Carrier to maintain separate positions to perform work which can adequately be performed by other covered positions, and the Board does not construe the Scope Rule here to so require.

The disposition of the Reception-related duties of the Receptionist position is more difficult. There is merit in the positions of both parties. Scope Rules are of vital importance to the parties. Where the parties have taken pains to negotiate them with great specificity, as here, they must be interpreted with great care to give effect to the parties' intentions. When, because of changed circumstances, the language of the Scope Rule cannot be applied without interpretation, the Board must analyze how the Rule should be applied to the new operational situation.

Here, the Carrier discontinued the Receptionist position. The Board concludes that the Agreement did not preclude it from doing so; the Agreement contemplates such action by the Carrier and Rule 36(c) provides for retention by covered positions of any "substantial volume" of work remaining after the discontinuance of a position. The question for determination is, therefore, whether the work which remained from the discontinued position constitutes a "substantial volume" which requires assignment of the work to a position covered by the applicable Agreement.

The record contains no evidence as to the volume of such reception work which remained for the Real Estate Department of the Carrier at its new location, and a number of factors suggest that it was not significant. The **Policeman** who assumed the Receptionist duties for the Real Estate Department performs building-wide Reception duties, including all the Departments of the Carrier and for all the Departments of another Carrier as well. In addition, the Policeman performs security duties which had not been performed by Ms. **McKenna**. The Board concludes that the Organization failed to demonstrate that the separate Departmental access duties performed by Ms. **McKenna** at the Carrier's prior offices continued to exist in any substantial volume at the new location; indeed, there is a strong inference from the record that they did not.

In addition, the building-wide security and **Police** functions which the Policeman performs at the Carrier's new Headquarters building had previously been performed by Security Personnel at the Carrier's prior offices who were not covered by the Agreement between the Organization and the Carrier. The record reveals no claim by the Organization that the work performed by those Security Personnel was within the Scope Rule of the Agreement. **It may**, therefore, be assumed that that work could be transferred to and performed at the new location without violation of the Scope Rule. The Board concludes that the Policeman at the new offices performs primarily and substantially work not within the Scope Rule which had previously been performed by the Security Guards rather than the Receptionist.

Accordingly, for the reasons set forth above, the Board concludes that the Carrier was authorized to discontinue the position and had legitimate reason to do so, that no substantial volume of work from the discontinued **Receptionist** position is performed by the Policeman, and that the Scope Rule does not require the Carrier to post and fill the Receptionist position or to compensate a covered Employee for the performance by a non-covered **Employee** of reception **work** which **might** remain. **The** claim must, therefore be, and it hereby is, 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 **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 W A R D

Claim denied.

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NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A handwritten signature in cursive script, appearing to read "Nancy J. Dever", is written over a horizontal line.

Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 23rd day of May 1985.