

The Third Division consisted of the regular members and in addition Referee Edward L. Suntrup when award was rendered.

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

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood
(GL-10029) that:

1. Carrier violated and continues to violate the effective Clerks' Agreement when, on or about February 27, 1984, it removed work from the scope thereof and thereafter required and/or permitted employes of another carrier to perform such work;

2. Carrier shall now compensate the senior off-duty computer operator for eight (8) hours' pay at the time and one-half rate of his/her position for February 24, 1984, and for each and every day thereafter that a like violation occurs."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

A claim was filed by the Organization with the Carrier on April 24, 1984. The claim alleged that work belonging to the Claimants at Joliet, Illinois had been transferred to others on February 27, 1984, and thereafter. According to the Statement of Claim such had been "...apparently done by directly inputting through CRT devices in the various accounting sub-departments by accounting department employees thereby eliminating the work done previous(ly) by the keypunch operators at Joliet." The claim alleged that such transfer of work was a violation of the Agreement's Scope Rule. The original claim was filed on behalf of the senior qualified furloughed employee

and/or his successor or successors for pay at computer operator rate "... commencing on February 27, 1984, and for each day a like violation occur(red) after (that) date." Since it was subsequently discovered by the Organization that there were not any furloughed employees who could qualify as Claimants for the alleged violation the claim was amended on April 25, 1984. It was refiled on behalf of "...senior off-duty operators for February 27, 1984, and every day after that like violation occurs for eight hours pay at the punitive rate of pay for each day violation occurs."

In its denial of the claim, the Carrier stated that the claim had cited no Rule from the Agreement which "...prohibits the substitution of CRT devices for keyed input of data to the Monroeville, Pennsylvania data processing center computer" from Joliet, Illinois.

On appeal, the Organization stated that the Scope Rule of the Agreement "...prohibits the transfer of work of Clerks to those not covered by (the) Agreement" and that this is what was done when the Carrier permitted the direct "...inputing (of) journal entries via CRT devices by the accounting clerks. (Such) bypassing (of the) EJE keypunchers in effect was a transfer of work from EJE employees to B&LE employees without negotiation."

As a preliminary point, the Carrier raises a procedural objection in its September 10, 1984, correspondence to the Organization. Its position is that the claim was not filed in a timely manner under Rule 28 1/2 of the Agreement because the alleged violation "...began on January 23, 1984, not (on) February 27, 1984." The provision of the Agreement which the Carrier is here referencing reads in pertinent part as follows:

"Rule 28 1/2 (a)

All claims or grievances must be presented in writing by or on behalf of the employee involved, to the officer of the Carrier authorized to receive same, within 60 days from the date of the occurrence on which the claim or grievance is based...."

This objection by the Carrier, reiterated in its Submission before this Board, is dismissed. The claim was submitted within 60 days of the date which, as far as can be determined from the record, the Organization knew of the first instance of the alleged Agreement violation.

There is no doubt, from the evidence of record, that the elimination and transfer of work were inseparably related to technological changes instituted by the Carrier. Of interest here, however, is the issue of what work was transferred where. The record supports, first of all, that the technological changes led to the transfer of work from keypunch and computer operators to direct input of data by means of electronic equipment. It is useful, for the record, to have the detailed description by both parties with respect to how they viewed what happened when the work in question was transferred. The Organization states, in its correspondence dated October 12, 1984, the following:

"...(o)n or about the date claimed, the Carrier changed the manner of handling certain accounting work. Previously, journal entries for various departments were prepared by clerks in the various sections of the Accounting Department. These were then input to Carrier's batch computer at Joliet, Illinois by keypunch operators under the scope of our Agreement. Overall control over this input and the processing of data was handled by computer operators.

Subsequently, Carrier eliminated the input of data to its computer and installed CRT devices whereby employees directly input such data to the computer owned by the Bessemer and Lake Erie Railroad company at Monroeville, Pennsylvania
...."

The Carrier's version of the transfer of work is as follows. This is taken from its correspondence to the Organization which is dated December 4, 1984.

"...(p)rior to making this change, information concerning journal entries was prepared in the Accounting Department and given to a keypunch operator who in turn recorded same on IBM cards. The computer operator would then place the IBM cards in a card reader which recorded the journal entry information in the computer.

The utilization of teleprocessing devices by clerks Carr, Wesley and Lantz...obviated the need for a keypunch operator and computer operator to perform the intermediate steps related thereto.

This is a situation in which data processing equipment performs work which formerly was done manually...."

According to the correspondence by the Carrier to the Organization which is dated September 10, 1984, employes Carr, Wesley and Lantz were also employees covered by the Agreement. This is not disputed by the Organization.

The Scope Rule of the Agreement states the following, in pertinent part:

"Rule 1(A)

These rules shall govern the hours of service and working conditions of all employes engaged in the work of the craft or class of clerical, office, station and storehouse employes. Positions or work coming within the scope of this agreement belong to the employes covered thereby and nothing in this agreement shall be construed to permit the removal of positions or work from the application of these rules, nor shall any officer or employe not covered by this agreement be permitted to perform any clerical, office, station or storehouse work which is not incident to his regular duties.

(B)

Whenever any mechanical device used for handling, duplicating, recording, transcribing, transmitting or receiving written, typed, printed, graphic or vocal communications, reports or records, or any combination of these, within the same or between different cities, is utilized for the accomplishment of work heretofore performed by employes subject to the scope of this agreement, such mechanical devices shall be operated by employes covered by this agreement."

This Rule is a "specific" or "position" Rule rather than a general one. It is the kind of Rule envisaged by Third Division Awards 20382 and 24810. The latter, for example, states the following:

"The words 'Position or work within the scope of this Agreement belong to the Employees covered herein' have been interpreted by the case law of this Board to mean that work not exclusively reserved to Clerks but assigned to a Clerk's position becomes the work of the position and is subject to the Rules of Clerk's Agreement."

This case before the Board provides a unique challenge for interpreting the provisions of the "position" Rule at bar in view of the facts of record. It is true that as a result of the transfer of work by the Carrier that one type of work done by covered employees turned into another type of work done by other covered employees of the Carrier. In this case the transfer represented a transfer of work from covered clerks doing one type of work to those doing

another kind. Thus there was a transfer of work from position to position, but not a transfer of work from the Agreement. The Organization does not appear to have problems with that, as far as can be determined. Its concern is an alleged second kind of transfer of work from under Rule 1. Its specific contention is that work was eliminated, and transferred, to B&LE employees from Carrier employees. The basis of this contention is unclear to the Board although it is clear that there was a direct transfer of information to the B&LE computer. Rule 1(A) addresses the "...removal of...work from the application of the rules." In the instant case it is not clear if any appreciable quantity of work was removed from the "...application of (the) rules" when the transfer of work took place. What did happen is that one type of work done by covered employees became another kind of work done by covered employees of the Carrier, on the one hand, and that there was a transfer of information to the B&LE computer on the other. The Board is extremely hesitant, given the facts of this case, to interpret such as a violation of the Agreement's Scope Rule and it does not think that it is reasonably justified in doing so. The Agreement was not violated.

The parties spend considerable time in the correspondence of record, as well as in their Submissions to the Board, discussing the applicability of the February 7, 1965 Job Stabilization Agreement and the February 25, 1983 Coordination Agreement to this case. Included in this discussion is the alleged applicability of Award 427 emanating from Special Board of Adjustment 605 to the same. The Board takes no position on the claims and counterclaims relative to what appears to have been a subsidiary dispute which developed between the parties as a consequence of the filing of the claim here under consideration. The original claim filed on April 24, 1984, alleged violation of the current Agreement's Scope Rule. That original claim was never changed, as the Statement of Claim to this case clearly shows, and it is to that which the instant Award is directed.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Decker - Executive Secretary

Dated at Chicago, Illinois, this 23rd day of June 1988.