

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30196
Docket No. CL-30625
94-3-92-3-395

The Third Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International
(Union
(The Atchison, Topeka, and Santa Fe Railway
(Company

STATEMENT OF CLAIM:

" Claim of the System Committee of the Organization (GL-10806) that

Claim No. 1:

(a) Carrier violated the provisions of the current Clerks' Agreement at Topeka, Kansas commencing April 25, 1988, by abolishing Communications Traffic Controller PAD Position No. 4002 partially covered by the Agreement and transferring the schedule work of this position to exempt employees not covered by the provisions of the current Clerks' Agreement, and

(b) The work which was removed from the scope and operation of the Agreement shall now be restored to the employees covered thereby, and .

(c) The senior occupant of the remaining positions at the time of abolishment, and/or senior off-in-force-reduction employee in the event of the occupant's retirement, resignation or other removal from the employment, of the Carrier, shall now be compensated eight (8) hours' pay at the pro rate monthly rate of \$2,821.47 of his position, including subsequent wage increases which otherwise would have occurred, for each work day commencing April 26, 1988, continuing until such violation ceases, in addition to any other compensation received for these dates.

Note: Claimant to be determined by a joint check of the Carrier's records.

Claim No. 2:

(a) Carrier violated the intent and provisions of the current Clerks' Agreement at Topeka, Kansas commencing November 15, 1988 when they abolished Communication Traffic Controller PAD Positions No. 4000, 4004, 4005, and 4006 partially covered by the Agreement and transferred the schedule work of these positions to four (4) newly created exempt positions which were filled by the appointment of the same four employees who had previously occupied the four PAD positions, and who now are not covered by the provisions of the current Clerks' Agreement, and

(b) The work which was removed from the scope and operation of the Agreement on November 15, 1988 shall now be restored to the employees covered thereby, and

(c) Claimants Cramer, Robertson, Manley shall now be compensated eight (8) hours' pay at the pro rata monthly rate of \$2,821.47 of their position, including subsequent wage increases which otherwise would have occurred, for each work day commencing November 15, 1988, continuing until such violation ceases, in addition to any other compensation received for this period."

Findings:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 waived right of appearance at hearing thereon.

As Third Party in interest, the International Brotherhood of Electrical Workers was advised of the pendency of this dispute, and filed a Submission with this Division.

On April 20, 1988, Carrier posted a notice abolishing Communications Traffic Controller (CTC) PAD Position No. 4002 at Topeka, Kansas, effective April 25, 1988. (This notice was subsequently corrected by Carrier, and Position No. 4008 was abolished instead.) It is this abolishment which is the basis for Claim No. 1 before this Board. The Organization further claims that Carrier similarly abolished Communication Traffic Controller PAD Position Nos. 4000, 4004, 4005, and 4006 effective November 15, 1988. These positions are the subject of Claim No. 2.

According to the Organization, the abolishment of these positions resulted in work which was formerly performed by the incumbents being transferred to employees who are either exempt from the Agreement or covered by the IBEW Agreement. The Organization asserts this work is reserved to covered employees, and cites Rules 1-A, 2-E and 2-F, which read as follows:

" RULE 1 - SCOPE

1-A. These rules shall govern the hours, compensation, and working conditions of all employees engaged in the work of the craft or class of Clerical, Office, Station, Storehouse, Tower and Telegraph Service Employees as such craft is, or may be, defined by the National Mediation Board. Officers or employees not covered by this Agreement shall not be permitted to perform any work or function belonging to the craft or class here represented which is not directly and immediately linked to and an integral part of their regular duties, except by agreement between the parties signatory hereto.

* * *

RULE 2 - GRADES OF WORK

2-E. Positions or work within Rule 1 - Scope of this Agreement belong to the employees covered thereby and nothing in this Agreement shall be construed to permit the removal of such positions or work from the application of the rules of the agreement.

2-F. When a position covered by this Agreement is abolished, the work assigned to same which remains to be performed will be reassigned to other positions covered by this Agreement, unless such reassignment of work would infringe upon the rights of other employees."

While this Board, as well as a considerable number of Special and Public Law Boards, have over the years, issued numerous decisions concluding that "positions or work scope rules" similar to the one quoted above, were not, because of their language, "general scope rules," it is evident that those Awards that have interpreted the Agreement between these parties have consistently held that the Scope Rule is "general in nature," and as such it is dependent upon the Organization to demonstrate that it performs the task on a system-wide basis. (See Third Division Awards 25003, 25125, and 22571.) The doctrine of *stare decisis* dictates that we follow those Awards in applying this Agreement. In this case, however, the only location where work of this nature is performed is this facility at Topeka, Kansas. Thus, if exclusivity is shown at Topeka, it will be presumed to be system-wide.

In its Claim No. 1, the Organization has made sixteen specific allegations of the removal of work from covered employees. The Carrier has addressed each of these allegations as follows:

" Claim: The Communication Traffic Controllers have been instructed to forward their telephone calls and/or program the telephone calls thorough the Circuit Supervisors for handling under the following circumstances.

(a) When a short vacancy occurs on a Traffic Controller position due to the unavailability of the regularly assigned occupant.

(b) When the occupant of a Traffic Controller leaves his position for a coffee break, lunch period, or restroom

Reply: It has been common practice ever since our relocation to the New Topeka GOB for Circuit Supervisors to protect incoming CTC telephone calls when the Traffic Controller is briefly unavailable. While protecting these respective telephone lines, Circuit Supervisors do not perform any duties covered under the scope of the current clerical agreement.

Claim: The Circuit Supervisors have been instructed to begin familiarizing themselves with the Traffic Controller's duties.

Reply: Circuit Supervisors, most of whom previously held Traffic Controllers positions, have been charged with the responsibility to supervise Traffic Controllers since late 1987 and, therefore, have not just begun to re-familiarize themselves with Traffic Controller duties.

Claim: The handling and/or filling of PBX Operator vacancies previously handled exclusively by the Traffic Controllers has now been assigned to the Circuit Supervisors.

Reply: When a short vacancy has occurred with our PBX Operators at Topeka, we have historically required that a supervisor be consulted and apprised of the circumstances. It has remained the responsibility of our supervision to authorize the call-in of extra board relief for our Operator positions. This has never been the exclusive work of Traffic Controllers.

Claim: Tie-ups from the field forces are being input by the NETCON Circuit Supervisors instead of Traffic Controllers. A new telephone extension has been installed in the Circuit Supervisor telephones exclusively for this purpose.

Reply: The 'TIE-UP' program was originally handled by exempt personnel and was recently transferred to the Circuit Supervisors for program management requiring an additional telephone line. Generally, imputing is performed by Communication Department employees, both exempt and scheduled, via field data terminals. Traffic Controllers are still being utilized to assist field personnel to input their tie-up information under certain circumstances.

Claim: Opening and closing of data trouble reports of Communication System out Service (CSOS) Program.

Reply: Since mid-1987, the opening and closing of data related trouble reports (within CSOS) has been exclusively handled by Circuit Supervisors.

Claim: Notifying and calling out Technicians to repair equipment in the field.

Reply: It has never been the exclusive work of Traffic Controllers to notify field personnel relative to communications related problems.

Claim: Setting up patches for data reroute.

Reply: Since October 1987 Circuit Supervisors have exclusively handled all aspects of data circuit reroute.

Claim: Updating and maintaining bad order data list in RID 274A

Reply: Traffic Controllers have not been responsible for updating information relative to data terminal equipment status covered in RID 274A since mid-1985.

Claim: Baseband checks on circuitry.

Reply: Historically, microwave baseband checks have been handled by IBEW personnel and have never been a clerical function.

Claim: Patching and testing data circuits at the VF Board.

Reply: Since mid-1987 the responsibility for testing and patching data circuits has been exclusively handled by Circuit Supervisors. Traffic Controllers have not been handling this duty.

Claim: Transmitting 7 AM morning reports to System.

Reply: The assembly and transmission 7 AM morning reports were in no way changed at the time we abolished Traffic Controller position # 4008. Our Circuit Supervisor and Traffic Controllers continue to prepare and transmit their respective reports.

Claim: Checking of Multiplex Channel Levels.

Reply: Historically, microwave multiplex channel levels have been handled by IBEW personnel and have never been a clerical function.

Claim: Notify Telephone Companies to repair Bad Order leased circuits.

Reply: It has never been the exclusive work of Traffic Controllers to notify telephone companies regarding repair or restoral of leased communication circuits.

Claim: IBEW Technicians updating CSOS trouble reports.

Reply: Since April 1987 the CSOS program enhanced to allow field updates to be input by all Communications Department employees. Traffic Controllers are still being utilized to assist field personnel to input CSOS updates.

Claim: IBEW employees using Tie-up Run instead of Traffic Controllers inputting.

Reply: The 'TIE-UP' program was implemented from the onset for all Communications Department employees to utilize."

In its Third Party Submission, the IBEW specifically states that the work of performing baseband checks on circuitry and checking of Multiplex Channel Levels has been reserved to its craft by both past practice and the IBEW Assignment of Work Rule.

While the Organization has attempted to refute each of Carrier's replies to the specific allegations made in Claim No. 1, the evidence at best, shows that covered employees has, at some time in the past, performed work which is now being performed by others. It is evident from the record that there may have been a gradual transfer of work from covered to exempt employees since early 1987. The Claim before this Board, however, is that the abolishment of the position on April 25, 1988, corresponded to the transfer of work. The Board does not find this to be the case. If work had been transferred for as much as a year prior to the abolishment, it is beyond the scope of this Claim, and therefore, beyond the jurisdiction of this Board to provide a remedy. Claim No. 1 must, therefore, be denied.

In Claim No. 2, the Organization alleges that Carrier abolished four Communications Traffic Controller positions on November 15, 1988, without properly issuing a notice and/or bulletin in accordance with Rule 16. The Organization asserts further, that Carrier then placed the incumbents of the abolished positions in exempt positions. Finally, the Organization claims the work which had been performed by these employees was then transferred to Circuit Supervisors, who are exempt from its Agreement.

Carrier first denies that it abolished the jobs without proper notice. Carrier claims the positions had already been vacated, obviating the need to serve a five-day notice. Carrier further argues the Claim was not filed on a timely basis. According to Carrier, Claimant Manley was removed from service on April 11, 1988, at which time his job was abolished. Carrier further states that the positions held by Claimants Cramer and Robertson were abolished on August 19, 1988. Thus, Carrier asserts that the Organization's claim dated January 12, 1989, was not presented within 60 days as provided in Rule 47. On this point, we find that Carrier's assertions are contradicted by General Superintendent of Communications first letter of denial of the Claim wherein he acknowledges that the jobs were abolished on November 15, 1988.

Carrier has also argued that the Organization has filed this Claim in behalf of improper Claimants, asserting the named Claimants were not the incumbents of the positions at the time they were abolished. In this regard, there is no evidence in this record from which the Board can make a determination as to the validity of Carrier's argument. We conclude, therefore, that the Claim has been properly filed.

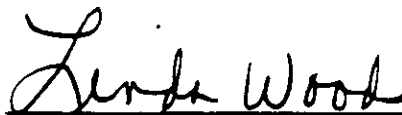
Turning to the merits of Claim No. 2, we find that the Organization's claim is based primarily upon its assertion that all of the covered Communications Traffic Controller positions have been replaced by exempt Circuit Supervisors. The record is devoid of evidence, however, showing what work is being performed by the Circuit Supervisors that might be reserved to the Organization's craft under the Agreement. It is not sufficient merely to assume that work has been transferred out of the craft, particularly in view of Carrier's assertions that much of the work is no longer required, while other elements of the job have been assigned to other covered employees. The Organization has the burden of proving what work has been transferred. Long and careful study of this record does not establish that that burden has been satisfied. Accordingly, Claim No. 2 must be denied.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:



Linda Woods - Arbitration Assistant

Dated at Chicago, Illinois, this 8th day of June 1994.