

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 31098
Docket No. CL-31649
95-3-93-3-670

The Third Division consisted of the regular members and in addition Referee Jacob Seidenberg when award was rendered.

(Transportation Communications
(International Union
PARTIES TO DISPUTE: (
(Delaware and Hudson Railway Company, Inc.

STATEMENT OF CLAIM: "Claim of System Committee of the Organization (GL-10994) that:

The following claim is presented to the Company in behalf of Claimant D. Butler.

(a) The Carrier violated the Clerks' Rules Agreement effective September 26, 1990, particularly Rules 11, 12, 13 and other Rules, when effective on or about September 2, 1992, they changed the "location" and the "duties" of Claimant Butler's position General Clerk Typist, Symbol #42, hours 0800 to 1630, which was formally "assigned" to the "location" within the "Administration Department" and moved Claimant into the "Accounting Department" and would now be required to perform accounting department duties instead of her "regular assigned duties" within the administration department, on a daily basis and refused to allow Claimant's displacement of a junior employee H. VanKampen, effective September 11, 1992, as a result of these changes.

(b) Claimant should now be allowed eight (8) hours punitive pay based on the pro-rata hourly rate of \$13.64, commencing September 11, 1992, and continuing for each and every workday thereonafter, on account of this violation.

(c) That in order to terminate this claim, the Carrier must allow Claimant Butler's displacement dated September 9, 1992.

(d) This claim has been presented in accordance with Rule 28-2 and should be allowed."

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the 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.

The dispute devolves upon the issue as to whether the Carrier improperly breached the relevant provisions of the Agreement by unilaterally moving the Claimant from a General Clerk's position in the Administration Department to a General Clerk's Position in the Accounting Department. The Claimant, prior to the September 2, 1992 move, occupied Job No. 42. When the incumbent of Job No. 48 in the Accounting Department retired on or about September 2, 1992, the Carrier unilaterally moved the Claimant into Job No. 48. When the Claimant was notified of the change on September 9, 1992, she informed her supervisors that she wished to displace to Job No. 57, General Clerk, which request was denied.

The Organization states the Carrier is in error when it maintains that the work of Job No. 48 was abolished when the incumbent thereof retired. The work still remains to be done and the Claimant is now used to do the work of Job No. 48. The Organization also states that the Carrier is in error when it insists that the work of both Jobs are virtually the same. It adds that an examination of the advertised duties of these two jobs, in the terms of the General Chairman, are measurably different. An examination of these advertised duties will reveal that they are measurably distinguishable. For example, Job No. 42 required more sophisticated typing, i.e., 45 words per minute, as compared to only 30 words per minute required by Job No. 48.

These two jobs were advertised and worked in two separate departments. The responsibilities of the Administration Department are significantly different than those of the Accounting Department. The Organization notes that Job No. 42 required the incumbent to compile letters, memoranda and reports, handle travel and meeting assignments, answer telephones and record messages, and maintain office equipment. The Organization states that none of these duties nor anything approaching their importance appears in the duties of Job No. 48.

The Organization states that under the Agreement, Clerks on this property have universal bidding rights and a Clerk in the Administration Department could bid on a job in the Accounting Department, but that is not to say this gives the Carrier the right to assign unilaterally a regularly assigned Clerk wherever and whenever it chooses. An individual Clerk who bids for a particular job in a specific department remains there until they choose to bid out, or the job is abolished, or they are displaced by a senior employee.

The Organization notes that Rule 11 requires that before the primary duties of a job are changed, the affected employee will be notified in writing and a copy will be forwarded to the General Chairman. Rule 12(f) stipulates that the bulletin will show the location of the primary duties. Section (j) stipulates that when the location of the position is changed, the incumbent may exercise displacement rights. The Carrier did not comply with these Rules.

The Organization cited Third Division Awards 13169, 18648 and 19123 to support its position in this case.

The Carrier, on the other hand, maintains that relocating Job No. 42 from within the Administration Department area to the Accounting Department area does not constitute the establishment of a new job in the Accounting Department. The situation came to pass when the General Clerk in the Accounting Department, Job No. 48, retired and the work station in that area became vacant. In order to better utilize the facilities, the Carrier stated it relocated the work station of Job No. 42 in the work area formerly occupied by Job No. 48. The change in the work station involved a move of 20 feet from the old work station. The Carrier states that there were no changes in the Claimant's hours of service or duties and the days off also remained the same.

The Carrier states the alleged Rule violations cited by the Organization are not in point. For example, Rule 12 refers to situations where the rest days, or the hours of service or the starting time are changed by more than two hours or the location is changed. None of these conditions occurred. The Carrier stated that since there were no changes in the Claimant's position, she had no displacement rights to exercise.

The Carrier stated there is no contractual support for the eight hours punitive pay claimed for the involved period of time. The Claimant was fully employed during the entire time period and she presented no evidence to show that she suffered any loss. There is no Agreement support for her claim.

The Board finds that the weight of the credible evidence does not support the claim. In the first place, a move of a given position for 20 feet within the same work area does not constitute a meaningful change in the job location within the purport of Rule 12.

The Board finds no probative evidence in the record to conclude that the Claimant was unilaterally assigned to perform the work of Job No. 48 in lieu of her Job No. 42. The only overt objective evidence in the record of change is that the Claimant was moved 20 feet to occupy the space or location that was formerly occupied by the now retired incumbent of Job No. 48. The record does not contain any specific allegations of any work now performed by the Claimant that was significantly different after September 2, 1992 than the work she performed prior to September 2, 1992. The work performed by the Claimant was of a general clerical nature and it continued to remain so after the shift in the work area. The starting time, the hours of service, the off days, the rate of pay all remained unchanged. In the absence of credible evidence that there has been a material change of duties or the location, the Board must deny the claim. The Board is also constrained that the Rules of the Agreement cited by the Organization, i.e., Rules 11, 12 and 13, are inapposite with the factual situation underlying this claim and therefore lend no support to the claim. Nor does the Board find support for the Organization's position in the Awards it cited. For example, in Third Division Award 13169 the Board states: "the circumstances are unique and the opinion is intended to apply only to these unique circumstances"; Third Division Award 18648 involved a case of changed rest days and Third Division Award 19123 pertained to the abolishment of jobs during a strike. None of these cited Awards is congruent with the instant claim.

AWARD

Claim denied.

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ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 1st day of September 1995.