

Award No. 13055
Docket No. CL-13459

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**

**THE DETROIT AND TOLEDO SHORE LINE
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5154) that:

(1) The Carrier violated the rules of the Agreement between the Brotherhood and the Carrier effective January 1, 1960 when on March 10, 1961 it created a new position of Secretary to the Assistant General Manager at Toledo, Ohio in Seniority District No. 4 and transferred certain stenographic and clerical duties from Seniority District No. 3 to District No. 4 which subsequently led to the abolishment of the position of Clerk in the General Manager's Office at Detroit, Michigan in District No. 3 on April 8, 1961; and

(2) The work be returned to the district from which removed; and

(3) Leslie Wilson and all other employees in Seniority District No. 3 who were adversely affected be compensated for any wage loss sustained as a result of the improper transfer of work and job abolishment.

EMPLOYEES' STATEMENT OF FACTS: On or about February 14, 1961 the Carrier established an official position known as the Assistant General Manager with headquarters at Toledo, Ohio.

Under date of February 20, 1961 Mr. E. L. Ray, General Manager, wrote to us as follows:

"Assistant General Manager, C. J. McPhail has been assigned full responsibility for maintenance and operation of this company's property, and has been designated as the officer authorized to represent and act for the company in all matters pertaining to agreements concerning rates of pay, rules and working conditions of employees, including disputes, claims and grievances related thereto.

Please address your future communications to Mr. C. J. McPhail at 4820 Schwartz Road, Toledo 11, Ohio."

Inasmuch as there therefore does not exist a qualified or proper claimant in this instance, and additionally, claim is without merit due to lack of evidence to support the Organization's contention of the work involved constituting a transfer, then the claim can only be considered, in light of the Organization's contention, that Carrier could have established the position of secretary to the assistant general manager in District No. 3 instead of District No. 4; and that being the case and in absence of a rule to cover, it would be proper for the Organization to file protest or request conference to resolve the alleged grievance the Organization feels is in evidence.

Item No. 2 of this claim of the System Committee calls for "The work to be returned to the District from which removed." This, of course, is possible, but not practical nor economical to the Carrier. Carrier has already indicated the amount of work performed by claimant that was eliminated, which accordingly eliminated the basic requirement for the position of general clerk. Suffice to say, however, that even if the Carrier were disposed to recreating the work eliminated, it would follow that the position of claimant would be restored but it would not follow that the position of secretary to assistant general manager could be eliminated, as the requirement for that work would remain and the incumbent would likewise.

As there is no basis in fact for this claim, Carrier respectfully requests that it be denied.

OPINION OF BOARD: On February 9, 1961, Carrier established an official position known as Assistant General Manager with headquarters at Toledo, Ohio. The duties of the position are set forth in the following letter from Carrier to Clerks:

"Assistant General Manager, C. J. McPhail has been assigned full responsibility for maintenance and operation of this company's property, and has been designated as the officer authorized to represent and act for the company in all matters pertaining to agreements concerning rates of pay, rules and working conditions of employees, including disputes, claims and grievances related thereto.

Please address your future communications to Mr. C. J. McPhail at 4820 Schwartz Road, Toledo 11, Ohio."

Prior to April 1, 1961, the listed duties were performed in the General Manager's Office located in Detroit, Michigan; and, the clerical work attendant to performance of the duties was distributed among a number of clerks, including Claimant, in the General Manager's Office.

Detroit is in Seniority District 3. Toledo is in Seniority District 4.

On March 10, 1961, Carrier bulletined, in District 4, a new position as Secretary to the newly created position of Assistant General Manager and made assignment on March 15.

On April 8, 1961, Carrier abolished the position of Claimant in Seniority District 3 and he was placed in furlough status.

Clerks contend that Carrier violated the Agreement in transferring the clerical work attendant to the duties of the Assistant General Manager from District 3 to District 4. While they admit that Claimant performed some of the work in Detroit that was transferred to Toledo, they argue that because the work was transferred Carrier by rearrangement of the remaining work in Detroit was able to abolish Claimant's position.

Rule 4 (b) is pertinent. It reads as follows:

"(b) An employe may follow his position when same is transferred from one Seniority District to another, and shall have prior rights thereto if he elects to accompany the same. Transfer of work requiring an average of four hours per day from one Seniority District to another, not necessarily at one time, shall constitute the transfer of a position. When requested by either party hereto, a joint check of the volume of work thus transferred shall be made. An employe electing not to transfer with his position may exercise seniority rights under Rule 18. The transferred position will thereupon be bulletined in the Seniority District from which transferred, and if not desired by an employe holding seniority in such district, shall be bulletined in the Seniority District to which transferred. Seniority of employes who are transferred under such circumstances shall be transferred to the new Seniority District."

To prevail Clerks have the burden of proving that "an average of four hours per day" of work was transferred from District 3 to District 4. Clerks say that it can be inferred from the nature of the work and creation of the position of Secretary to Assistant General Manager in District 4 that four or more hours of work per day was transferred. We cannot draw such a conclusion in the absence of it being supported by evidence of probative value. Clerks' failure to request a joint check of the volume of work transferred, as provided for in Rule 4 (b), has left to speculation the volume of work transferred. We find that Clerks failed to satisfy its burden of proof. We will, therefore, dismiss the Claim.

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 Employes involved in this dispute are respectively Carrier and Employes 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 Claim must be dismissed for failure of proof.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 13th day of November 1964.