



Award Number 17609

Docket Number CL-18071

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Gene T. Ritter, Referee

PARTIES TO DISPUTE:

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

THE BELT RAILWAY COMPANY OF CHICAGO

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6532) that:

- (1) Carrier violated the Clerks' Agreement beginning June 12, 1967, when it abolished General Clerk Position #71 in the Service Bureau and transferred the work thereof to the Service Bureau Manager, an employee not subject to the Agreement, continuing to October 16, 1967 when the position and work was restored to the employees.
- (2) The Carrier shall be required to compensate one of the following named employees a day's pay, at the applicable overtime rate of Position #71, for each and every work day, beginning June 18, 1967 and continuing until October 15, 1967:

W. Witthoft, F. Uttenweiller or V. West, for each Monday.
F. Uttenweiller, V. West or A. Schultz, for each Tuesday.
W. C. Mutzbauer, J. Behrschmidt or A. Schultz, for each Wed.
W. C. Mutzbauer, J. Behrschmidt or A. Schultz, for each Thurs.
H. Webber, W. Erklens or A. Herb, for each Friday.

EMPLOYEES' STATEMENT OF FACTS: The Carrier at its Clearing Illinois facility, maintains a Service Bureau, which on or about the effective date of this dispute consisted of a Manager and three (3) employees, namely, a Car Order Clerk, Position #33, a Home Route Clerk, Position #34 and a General Clerk, Position #71, designated by the Carrier as a five day per week positions with Saturday and Sunday rest days, all under the direct supervision of the Manager, who is not subject to the Agreement.

In addition to his supervisory duties, the Manager of the Service Bureau handles all telephone expedite message cars and all extra dimensional shipments for clearance to the connecting lines, in short, all expedite message cars and all measurements on extra dimensional shipments are telephoned to him and it is his responsibility if same have sufficient clearance on the Carrier's rails, as well as the line haul carrier. The telephone information he receives on these cars is transcribed on a regular prepared form from which messages are prepared on the typewriter by the General Clerk in sufficient number, with some, requiring as high as twenty (20) copies, which then are distributed to various locations on the railroad to alert all concerned as to

casions one or more of the named claimants, including the first named claimant, were not available to perform the service the claim alleges they should have been used to perform. The rule does not comprehend, or provide, that the Carrier is obligated to go to this extent to bring about "order out of chaos".

CARRIER'S STATEMENT OF FACTS: In May, 1967, position #71 in the Car Service Bureau, Clearing Yard in the Agent's office became vacant due to an employee exercising his seniority. The duties of this job consisted of "handling of home routes, taking and placing of reconsignments, receiving and placing of car orders, telephone tracing of cars, handling of bills without cars and cars without bills, and such miscellaneous work in connection with foregoing and incident thereto, typing of messages, and such other miscellaneous work that may be assigned from time to time."

In addition to Position #71 there are two other clerical assignments in the Service Bureau. The duties assigned to each of these jobs are identical, except that Position #71 requires the typing of messages. Bulletins covering the assignments in the Car Service Bureau are attached hereto as Carrier's Exhibit A, B and C.

Agent R. E. Santoro on May 24, 1967 issued a notice that Position #71 was abolished. The work in the department according to the Agent was such that said job was not needed at that time. Shortly thereafter the job was inadvertently readvertised, and it was again necessary to abolish the job. The job was abolished for the second time by Notice dated June 6, 1967.

The Carrier contends that the Manager of the Service Bureau performed only the routine or work inherent to his job. The employees are not in dispute with the fact that the remaining employees were not required to perform additional duties. Likewise, the employee's have not alleged it was necessary to work on an overtime basis in the absence of this one assignment.

The evidence submitted by the General Chairman in support of the alleged violation is that on two of the one hundred twenty-six (126) days involved in their claim he witnessed the Manager doing work exclusively assigned to Position #71.

The Carrier after taking exceptions to the filing of a claim on behalf of three claimants for one position declined the claim on the basis that the Service Bureau Manager did not perform work of the disputed job, but only that which he performs continually.

(Exhibits Not Reproduced)

OPINION OF BOARD: General Clerk Position No. 71 in the Service Bureau at Clearing, Illinois was abolished by Carrier on June 12, 1967. The Organization alleges that thereafter and on June 18, 1967, Carrier authorized and permitted the Service Bureau Manager to perform the work previously performed by the occupant of Clerk Position No. 71, thereby removing routine clerical work from the scope and operation of the Agreement. Carrier contends that this claim is not properly before this Board for the reason that the Organization filed claim for three Claimants for each day of the work week in violation of Article V 1(a) of the August 21, 1954 Agreement which requires claims to be filed on behalf of the employee involved. Carrier also contends that the work performed by the Service Bureau Manager during the involved time was not the work of Position No. 71.

The Organization alleges throughout its submission that the claim as filed is proper for the reason that the work in question was transferred from the

Clerk's position to a person not covered by contract; that the work rightfully belonged to the employees and that by naming three claimants for each day of the week, Carrier could avoid its obligation by denying the claim for the first named employee because of non-availability or some other reason, and thereby not be required to pay anyone. This Board finds that the contention of the Organization is well taken. This Board finds that there is nothing chaotic or complicated in the manner this claim was filed; a Carrier will only be required to pay one Claimant for one day's violation and the first named Claimant, if available for that day's work, will be entitled to the amount awarded. In the event the first named Claimant is disqualified for some reason from receiving a payment proceeding from this award, then his first alternate would be entitled to such payment.

This Board also finds that this is a clear cut case involving transfer of work and that the Organization has presented a prima facie case showing that work of General Clerk Position No. 71 was transferred to the Service Bureau Manager at the Clearing, Illinois Station when General Clerk Position No. 71 was abolished by Carrier on June 12, 1967. This prima facie case has not been rebutted by probative evidence, and, therefore, the claim will be sustained. Awards upholding this award are No. 3514 (Douglas), 6284 (Wenke), Award No. 48 of SBA No. 170 (Sharpe) and Award No. 14 of SBA No. 194 (Wyckoff). Also see Awards Nos. 7348, 7349 and 7350 (Coffey).

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 violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 17th day of December 1969.

CARRIER MEMBERS' DISSENT TO AWARD 17609, DOCKET
CL-18071 (REFEREE RITTER)

We believe the Referee and Labor Members committed error in concluding that the claim is properly before us. We also believe they committed error in concluding that there was an improper transfer of work. Our reasons for our belief are fully set forth in the memorandum handed to the Referee at the panel discussion.

We dissent.

/s/ G. L. NAYLOR
G. L. Naylor

/s/ R. E. BLACK
R. E. Black

/s/ P. C. CARTER
P. C. Carter

/s/ W. B. JONES
W. B. Jones

/s/ G. C. WHITE
G. C. White



Serial No. 236

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Interpretation No. 1 to Award No. 17609

Docket No. CL-18071

Name of Organization:

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

Name of Carrier:

THE BELT RAILWAY COMPANY OF CHICAGO

Upon application of the representatives of the Employees involved in the above Award, that this Division interpret the same in the light of the dispute between the parties as to the meaning and application, as provided for in Section 3, First (m) of the Railway Labor Act, as approved June 21, 1934, the following interpretation is made:

At the time Docket CL-18071 was adopted as Award 17609, the referee in this case was with the understanding that Position No. 71 was worked by the Manager of the Service Bureau and not performed by a Clerk governed by the Scope Rule of the applicable Agreement. The claim, in the opinion of the referee, never contemplated a claim for days where Position No. 71 was worked. This Board is not for the purpose of unjust enrichment and the file containing correspondence subsequent to Award 17609 indicates conclusively that the 13 Fridays questioned by Carrier were worked by a Clerk covered by the Scope Rule and the Organization is not, therefore, entitled to recover for those days that the contract was not violated.

Therefore, the Carrier's contention, concerning the 13 Fridays in question in this interpretation, is well taken and Carrier is not liable for payment for the 13 Fridays involved in this dispute where the contract was not violated.

Referee Gene T. Ritter, who sat with the Division as a neutral member when Award No. 17609 was adopted, also participated with the Division in making this interpretation.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION**

**ATTEST: S. H. Schulty
Executive Secretary**

Dated at Chicago, Illinois, this 11th day of September 1970.

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