

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19769
Docket Number CL-19833

Benjamin Rubenstein, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
PARTIES TO DISPUTE: (
(Bangor and Aroostook Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-7104)
that:-

(1) Carrier violated and continues to violate Rules 1, 2, and 3 among others of the current clerks agreement, effective September 1, 1949 when as a result of its Bulletin #8 dated October 21, 1970 it abolished one of its two (2), third track positions in its yard at Northern Maine Junction, Maine and transferred the work to employees of another craft and class not covered by the Clerical Agreement.

(2) Until corrected Carrier shall pay Yard Clerk C. A. Hatt, a days pay at punitive rates beginning November 1, 1970.

OPINION OF BOARD: The Petitioner contends that the Carrier violated Rules 1, 2, and 3 of the clerk's agreement, when it abolished one of its two third track positions and transferred the work to employees of another craft, outside of the Clerical Agreement, thus depriving claimant of his work. It asks for payment at punitive rates to Clerk C. A. Hatt.

Rule 1. - Scope of Employees Affected - lists the groups and classifications covered by the Agreement.

Section (b) of said Rule provides:

"Positions and work within the scope of this agreement belongs to the employees covered thereby, and nothing in this agreement shall be construed to permit the removal of positions or work from the applications of these rules, except in the manner provided in Rule 49."

Rule 2 (a) defines clerks as employees devoting four or more hours of their time to clerical work. Rule 2 (b) reads:

"It shall not be permissible under Paragraph (a) of this rule to assign clerical work occurring within the spread of the hours of assignment to more than one position not classified as a clerk for the purposes of keeping the time devoted to such work by one employee below four hours per day."

Rule 3 covers seniority within the districts and provides that "seniority districts as now in effect, shall remain in effect unless or until changed by mutual agreement"

On October 21, 1970, the Carrier posted an announcement that it will have to reduce its work force on the third shift and abolish two clerks' positions. The third trick consisted of three employees. Two were members of the claimant union, while the third was a member of the Transportation-Communication Division.

On November 1, 1970 one of the two 3rd trick employees was let go, and part of his work was turned over to the member of the Transportation-Communications Division.

The Organization claims that the work now done by the member of the Transportation-Communications Division belongs to the member of this Organization, exclusively, and therefore its member, the claimant, be reinstated with punitive back pay to November 1, 1970.

The Carrier, in its denial of the claim, cites its agreement with the Transportation-Communication Division, which includes in its scope clerical functions. It further claims that the members of this Organization could not perform communication work, and in view of the fact that clerical work was reduced to such an extent, that there was not four hours work for the second clerk, his position had to be abolished and the small amount of remaining clerical work turned over to the Agent-Operator who, by agreement, was permitted to do some clerical work.

The Carrier in its statement of position cites a joint study made by it and Maine Central, (with which Carrier had arrangements for sharing expenses,) of work between the hours of 11:00 p.m. and 6:00 a.m. (3rd trick), which study showed that during a period of 147 hours, the employees worked a total of 61 hours and 36 minutes and were idle a total of 85 hours and 24 minutes. "The productive time of the two clerks of the Organization herein constituted but 43 hours and 37 minutes, while they were idle 54 hours and 23 minutes ... The time study made by the two railroads revealed that one clerk worked an average of 4 hours and 12 minutes daily and the other 2 hours 2 minutes."

The Carrier further cited Article 1 of its Agreement with the Transportation-Communication Division, which includes the position of "Operator-Clerks", and claims that under the provisions of its agreement with the Transportation-Communication Division, the members of that Division may also perform clerical functions.

The issue to be determined by this Board is, whether the agreement between the Organization herein and the Carrier is so restrictive in its scope, that all clerical work, regardless of its nature, belongs solely and exclusively to members of the Organization.

The claimant seeks to answer this question in the affirmative. The Carrier contends the opposite. It claims that the nucleus of a station work force is the Agent and Operator-Clerk, whose principle function is to expedite the movement of trains and handle record keeping. Clerical employees are added only when record keeping increases beyond the capacity of the basic work force, and conversely when the record keeping decreases, the clerical force may be decreased and the remainder of the clerical work turned over to the Agent and Operator-Clerk.

The issues in the instant case are somewhat similar to those in Award No. 13249 (Hamilton) between the same parties. In that case, we held, that "where the work at a particular location decreases, and there is telegraphic work remaining, it is proper to retain the telegrapher, and assign to him clerical work to fill out his tour of duty, when he is not occupied with telegraphy or communication duties."

We said there:

"There is no question that, if the volume of work for the regular days of the position would have so diminished, the Carrier could have properly acted in the same manner, and assign the remaining duties of the clerk to the telegrapher."

This is exactly what happened in the instant case. The Board sees no reason to reverse its well established position.

Rule 2, definition of clerk, defines clerks as those "who devote four (4) hours or more of their time on any day to ..." their duties.

The Rule is clear and unambiguous. For an employee to be designated as clerk, he must devote four or more hours per day to his duties. Conversely, an employee, who devotes less than four hours per day to clerk duties, is not designated as clerk or clerical worker. Had the parties intended an employee doing less than four hours per day, to be designated as clerk, they would have provided so in the Rule. If an employee has no work of four hours or more per day, he cannot be designated as clerk or clerical worker and his job is not protected under the provision of the agreement.

The study referred to in the Record and cited hereinabove shows that one of the two clerks on the 3rd track worked only two hours and two minutes per day, almost half of the time required to designate him as clerk.

The Organization does not contest, nor present any evidence to controvert the above mentioned study of the Carrier. Nor did it present any evidence to refute the Carriers claim that the work involved has not been historically, customarily, and exclusively that of the petitioner herein.

The Board law has been clearly established in numerous decisions that the burden is on the petitioner to prove its claim in such cases.

We are of the opinion that claimant failed to establish its burden of proof.

Claim is to be denied.

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 not violated.

A W A R D

Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

E. A. Killen
Executive Secretary

Dated at Chicago, Illinois, this 25th day of May, 1973.