

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19894  
Docket Number CL-19909

Irwin M. Lieberman, Referee

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

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-7146)  
that:

(a) Carrier violated the Clerks' Agreement at Atlanta, Georgia, when two excepted positions were established in the Office of Manager, Capital Accounting, and the occupants of these positions being assigned duties formerly performed by schedule clerical employees.

(b) Carrier be required to compensate Claimants Mr. W. S. Potts, Mrs. S. O. Boston and Mrs. L. T. Powell for \$1,635.00 per month to be equally divided among them. This being the combined salaries of Mr. R. A. Waller and Mr. C. A. Farr, occupants of the two excepted positions.

(c) Carrier violated the Clerks' Agreement at Atlanta, Georgia, when Abolishment Bulletin No. 1 was issued by Mr. L. O. Todd, Jr., Manager, Capital Accounting, abolishing the position of Clerk assigned to Mr. M. W. Foster, account schedule clerical work formerly performed by him being assigned to and performed by the occupants of the two excepted positions.

(d) Carrier be required to restore the position formerly held by Mr. M. W. Foster and restore the work to that position.

OPINION OF BOARD: The record indicates that an official position of Tax Accountant was established in Carrier's Capital Accounting Office in November 1969. Effective June 1, 1970, two additional Tax Accountant positions were established and filled in that office. Petitioner contends that the latter two positions should have been established as scheduled positions covered by the Agreement, since they were assigned duties formerly performed by schedule clerical employees.

The Carrier contends that the monetary portion of the claim is barred because the claim was not filed within sixty days from the date the first Tax Accountant position was established in November 1969. We do not agree. The occurrence giving rise to the claim was the establishment of the two additional Tax Accountant positions effective June 1, 1970. The claim was filed within sixty days from that date. The contention of the Carrier in this respect is without proper basis and is rejected.

As to the merits of the dispute, there is no agreement restriction upon the number of official positions that may be established by the Carrier. In the application of a general type scope rule, it is well settled that officials, whether the positions were previously in existence or newly established, may perform incidental clerical work relating to such positions. In the handling on the property the Carrier denied that the occupants of the Tax Accountant positions performed work reserved to positions covered by the Agreement.

The Scope Rule of the Agreement involved herein has been interpreted in a number of decisions of this Board (Awards 14075, 15890, 16934, 19339, 19340) as being general in nature, not defining the work covered by the Agreement. Under this Scope Rule, therefore, it is the obligation of the Petitioner, if it lays claim to certain work, to prove that by tradition, custom and practice, such work is reserved to employees covered by the Agreement. In this case the Petitioner has failed to meet that burden.

In the handling of the dispute on the property, the Petitioner's representative stated:

"... our February 17, 1969 Section Six Notice could take care of this".

This statement recognized that the issue in the case was one for negotiation rather than interpretation of the present agreement. It is well recognized that this Board has no authority to rewrite the rules.

Based upon the entire record, we find that the Petitioner has failed to meet the required burden of proof and the claim will therefore be denied.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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

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That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: H. W. Paulos  
Executive Secretary

Dated at Chicago, Illinois, this 8th day of August 1973.