

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20568
Docket Number CL-20602

William M. Edgett, Referee

(Brotherhood of Railway, Airline and Steamship
(Clerks, Freight Handlers, Express and
(Station Employees

PARTIES TO DISPUTE: (

(Union Pacific Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-7484) that:

1. Carrier violated the currently effective controlling agreements between the Brotherhood of Railway, Airline and Steamship Clerks and the Union Pacific Railroad Company when, subsequent to the abolishment of the position of Relief Clerk at the close of shift May 21, 1972 and the position of Yard Clerk at the close of shift May 22, 1972 at Ayer, Washington, the Agent at that location was assigned work of the abolished positions, i.e., making arrival and departure reports on trains, handling IBM work in connection with pick ups and set outs and IBM key punch work.

2. Carrier shall now be required to compensate Claimant T. J. Bren for a minimum call for each and every work day (two hours at the time and one-half rate) and a minimum rest day call for each and every rest day (five hours and twenty minutes at the time and one-half rate), beginning May 23, 1972 and continuing until violation of the agreement ceases.

OPINION OF BOARD: On May 21 and 22, 1972 Carrier abolished the position of relief clerk and yard clerk at Ayer, Washington. The Agent, who had worked from 8:00 a.m. to 4:00 p.m., was assigned to work from 3:00 p.m. to midnight. After the re-assignment there were no station forces on duty from 8:00 a.m. to 3:00 p.m.

The Organization asserted, on the property, that the:

"Agent is now making various arrival and departure reports on trains arriving and departing Ayer and is also handling IBM work in connection with pick ups and set outs of trains 119 and various other trains. He is doing keypunch work that has been and still is work performed by clerical forces in connection with IBM equipment."

Carrier's response to the claim that specific work, formerly performed by a clerical position, was now being done by the Agent, was to stress that the work was not exclusively performed by clerks and to offer a statement by the Agent in which he stated that in his opinion the IBM work he is doing on his new shift is within the Scope Rule of the T-C Division of BRAC. He states that he has always done some IBM work and that he believes that "part of the machine belongs to the Telegraphers."

The Organization has, of course, the burden of proving the facts essential to establishing its claim. It placed the essential facts before Carrier. At that point the burden of going forward with the evidence shifted to Carrier. Carrier's response was an essential reliance on the question of exclusivity. The Agent's statement is also framed in that vein. There has been no denial and in fact recognition by Carrier that the Agent has assumed duties formerly performed by the abolished clerical positions. Carrier has incorrectly relied on the theory that the governing rule applies only to work which was exclusively performed by the clerical positions.

The Rule at issue is:

"Rule 1 - Scope

* * * * *

(g) positions within the scope of this Agreement belong to the employees herein covered and nothing in this Agreement, except as provided in Rule 18 (f) shall be construed to permit the removal of such positions from the application of these rules except by agreement between the parties."

"Rule 18 (f) When a position covered by this Agreement is abolished, the work previously assigned to such position which remains to be performed will be assigned in accordance with the following:

(1) To another position or other positions covered by this Agreement when such other position or positions remain in existence in the Seniority District at the location where the work of the abolished position is to be performed."

This Board and various Special Boards of Adjustment have interpreted the language found in Rule 18(f) to mean that the Organization does not have to prove that work assigned to an abolished position was exclusively performed by clerical employees. In Award No. 13125 this Division said:

"We agree that the Agreement makes certain Carrier's right to abolish positions. We do not agree that the Clerks' must prove, in this case, that the work of the abolished position has been performed, exclusively, by employees covered by the Clerks' Agreement."

Carrier relies on an Award on the property by SBA 1083. In its Award No. 1, which denied claims similar to those before us the Board said of the Organization's reliance on Rule 18(f):

"The reliance upon Rule 18(f) is ill founded since that rule as amended, became effective May 1, 1970 and the abolishment of the Relief Clerk position and the reassignment of the duties thereof occurred prior to the effective date of the rule."

Award No. 1 of SBA 1083 offers Carrier no support for its position here, as can be plainly seen.

The record, fairly read, shows that work which had been performed by the abolished positions is now being performed by the Agent. It is not necessary for the Organization to show that such work is exclusively performed by clerks. It is enough to show that work which had been performed by a clerical position, and which remained after the abolishment, was not assigned as provided by the Rule.

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 Employee involved in this dispute are respectively Carrier and Employee 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 violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulson
Executive Secretary

Dated at Chicago, Illinois, this 30th day of December 1974.