

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21847
Docket Number CL-20959

Lloyd H. Bailer, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employes
(
(Robert W. Blanchette, Richard C. Bond
(and John H. McArthur, Trustees of the
(Property of Penn Central Transportation
(Company, Debtor

STATEMENT OF CLAIM: CASE GL-7683

"Please consider the following as a continuing claim being filed on behalf of Mr. Jos. W. O'Connor and/or his successors, Clerk, Claim Department, Boston, Mass. Fact Center, due to violation of the Scope of the Clerks' Agreement effective with November 15th, 1971.

"As you are aware, Mr. O'Connor has been instructed to cease his handling of questionnaire tracers from various Railroad Companies principally in connection with perishable freight movements on which freight claims have been instituted, and instead, forward them to the MDT Corporation for their handling. In fact, employees of the MDT, not subject to our Agreement, have presented themselves at the FACT Center, removed tracers from Mr. O'Connor's possession and performed the work normally performed by Mr. O'Connor.

"Inasmuch as neither the MDT Corporation or its employees are subject to any of the rules of the Clerks' Agreement it is, therefore, clear that Carrier has violated the Agreement.

"Accordingly, we now request that the work complained of above be returned to the Scope of the Agreement, and that Mr. O'Connor be additionally compensated eight (8) hours pro rata pay effective with November 15th, 1971, and continuing daily until such time as the Agreement is complied with."

OPINION OF BOARD: The contention in this claim is that Carrier violated the Agreement by transferring clerical work performed by an employee covered by that Agreement to a subsidiary firm, Merchant Despatch Transportation Corporation (MDT Corporation), to be performed by employees not covered by said Agreement. The Organization says the disputed action occurred on or about November 15, 1971. The Carrier states this action took place on or about September 1, 1971. In any event, the subject claim was initially presented by letter dated November 19, 1971 in behalf of Joseph W. O'Connor, who was then working in the Freight Claim Department of Carrier's FACT Center in Boston, Massachusetts. Among the duties of claimant's position was the handling of questionnaire tracers from various railroads throughout the country in connection with perishable freight movements on which freight claims had been instituted. Claimant was instructed to cease this handling, and instead to forward said tracers to the MDT Corporation for handling.

Carrier defends on two grounds: 1) That Carrier's action in this case did not constitute a transfer of work to the MDT Corporation, since that firm has for many years performed the identical work in dispute. What has taken place is that duplicate functions of answering claim inquiries performed by Claimant O'Connor have properly been eliminated and are no longer required. 2) That the work in question does not accrue exclusively to Clerks under their general Scope Rule and even if it were considered that the subject work was transferred to the MDT Corporation, such transfer would not constitute a Scope Rule violation.

Carrier further contends there is no basis for any monetary compensation because neither claimant's nor any other position in the Boston FACT Center was eliminated as a result of the action in question. Carrier states that due to a physical disability claimant has not performed any service since March 30, 1972 and his successor has been regularly assigned throughout the period of this claim.

As to Carrier's contention of work duplication, perhaps the MDT Corporation once performed the same type of work but the evidence refutes any implication that MDT handled this work simultaneously with Claimant's handling of such work at the Boston FACT Center. If such duplication had occurred there would have been no reason for MDT employees to enter claimant's work location and perform the disputed work. There also would have been no reason to instruct claimant to forward all tracers to MDT. Thus the duplicate work argument of Carrier is without substance. We hold that a work transfer did occur.

The record establishes that work of the character here involved has been performed traditionally by clerical forces throughout the system except at the smaller (or one-man) stations, where the ebb-and-flow principle has been in effect. But Rule 3-C-2 is not applicable to the present case. It follows that Carrier violated the Agreement by transferring to outside persons work embraced within the Agreement.

The evidence is that claimant lost no pay as a result of this violation. We are not entitled to speculate that if Carrier had not transferred the disputed work, claimant would have been assigned overtime, or another position would have been established at the FACT Center in Boston. Thus no additional compensation is due.

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 in part and denied in part, per above Opinion of Board.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A.W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 18th day of January 1978.