

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22246
Docket Number CL-22026

Dana E. Eischen, 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-8331, that:

"(a) Carrier violated the Agreement at Washington, D. C., when it unilaterally shifted clerks in the Marketing Department, Washington, D.C., from one position to another without regard to the position on which they had submitted bids, and to which they had been assigned by bulletin and without regard to the different rates of pay of the various positions.

(b) Carrier shall be required to cease the practice of shifting clerical employees from one job to another, except through bidding or displacing rights. Further, Clerks Don Shovely and Ron McWhorter be compensated at the Executive Clerk rate of \$56.44 per day instead of the Rate Clerk rate of \$54.57 per day."

OPINION OF BOARD: Claimants in this case were employed as Executive Clerks in Carrier's Marketing Department, Washington, D. C., at the time the claim arose in 1976. Under date of January 17, 1976 the claim was initiated by letter of the Local Chairman, M. U. Conlan, to D. S. Dabbs, Director, Rates, Routes & Divisions, Marketing Department, reading in pertinent part as follows:

"Dear Mr. Dabbs:

In accordance with Rule C-2 of the working agreement of May 1, 1973 with this organization, I hereby request an investigation for and in behalf of the employees in Marketing for the following reasons:

"On January 1, 1976, Mark Smith was promoted to an excepted position. Subsequently, bulletins were posted and positions awarded. On January 9, 1976 various physical changes of employees took place. These changes involved employees who were placed on positions they had not bid for.

1. Zena Bryce was placed on Mark Smith's position, however Maurice Taylor was the successful bidder for the position.
2. Maurice Taylor was physically moved into the position occupied by Don Shovelv. This was not a bulletined change.
3. Don Shovelv was moved into the position of James Moore without an increase in pay. Again this was not a bulletined move.
4. James Moore was moved into the position occupied by Ron McWhorter. Also, not a bulletined change.
5. Ron McWhorter was moved into Graham Brown's position without an increase in pay. Again, not a bulletined change.
6. Graham Brown was physically moved into Zena Bryce's position.
7. Steve Allen was awarded Maurice Taylor's position, however the position was located in the quotation section of the office. Bulletin did not indicate that this position was to be placed at another location, specifically 3X Group. The work in these groups are definitely different.

The above named and unnamed employees of the Marketing Department have been, and continue to be arbitrarily and unjustly treated.

Your immediate attention will be greatly appreciated."

Mr. Dabbs responded on January 26, 1976 granting request of hearing which was held January 28, 1976 before W. G. Briggs, Manager, Administrative Services. Under date of February 5, 1976 Mr. Briggs notified the Organization that its allegations were not proven. On March 8, 1976 the Local Chairman filed a grievance with Mr. Dabbs which he denied on several grounds on April 8, 1976. Subsequent appeals on the property ultimately were denied by J. L. Ferrell, Carrier's Assistant Director of Labor Relations.

The factual record establishes that for years prior to 1961 the clerical forces in the Rates Section worked as a pool. Since a reorganization in 1961, however, the Rate Clerks, Executive Clerks and Senior Executive Clerks have worked in "Groups." These groups were described in unrefuted testimony on the record (Dabbs) as follows:

"The R-2 Rate Group handles lumber, clay, grain, paper and Section - 22 Quotations, you won't want that though, ammunition and explosives and motor vehicles. The R-3 Rate Group handles TOFC traffic, switching, iron and steel, rubber. That's the principal commodities. The R-5 Group handles chemicals, sand and gravel and construction aggregates, coal, export-import traffic, canned goods. Those are the principal commodities in the R-5 Group. In the Quotations Section, they handle rate quotations for all commodities including routing over which the rate quotations apply. In the Routing and Divisions Section, if you want those, they don't handle specific commodities. But if you want those I'll try to cover."

The instant claim arose in January 1976 when Executive Clerk Mark Smith was promoted out of the craft or class and into an excepted position. Thereafter followed a series of personnel changes and shuffling of various employees from Group to Group within the Section by Mr. Dabbs. Specifically, Mark Smith's Executive Clerk vacancy in Group R-3 was bulletined and subsequently awarded to Maurice Taylor, an Executive Clerk who formerly worked in the Quotations Group. Claimant Don Shovely, an Executive Clerk in the R-3 Group was moved into Quotations as an Executive Clerk to replace Maurice Taylor. Also at the same time Executive Clerks Zena Bryce and Ronald McWhorter were moved from R-2 Group into R-5 Group and Executive Clerk Graham Brown was moved from R-5 Group into R-2 Group. The record shows that Claimants McWhorter and Shovely did not request their respective changes nor were the rearrangements bulletined or posted for bid-in. Unrefuted testimony, however, indicates that supervisor Dabbs discussed the moves beforehand with affected employees. We note also that the Carrier's assertions stand unrefuted that from its perspective the rearrangements were motivated by consideration of effective manpower utilization and broadening the exposure and experience of the various employees.

Some threshold questions are presented regarding procedural handling but they are not determinative of the case. We are not persuaded that the claim is untimely filed because even if arguendo the practice since 1961 is as Carrier asserts, the violation alleged herein is one of a "continuing" nature. See Award 21782, et al. Nor are we persuaded that filing of the claim with Mr. Dabbs rather than Mr. Briggs was a fatal defect under Rule C-3 since there is no showing at all on this record that the latter was designated by Carrier as "the officer of Carrier authorized to receive claims." When placed in issue, the burden of such a showing is upon Carrier and since it has not been met we cannot find that the Organization acted improperly by filing the claim with Mr. Dabbs.

Turning to the merits of the claim we find that it is without support in contract or in fact and must be denied. We cannot agree with the Organization's assertion that rearrangement of forces within the Rate Section and among the several Groups without posting and bulletining is a per se violation of Rules B-7 or B-13. Specifically, on the record before us we find nothing to support the Organization's implicit assumption that Group seniority or a proprietary interest in a group assignment is granted by the Agreement. To the contrary, the available evidence of contract language and past practice suggests that Departmental seniority is intended under the Agreement. We are compelled to the conclusion that current contract language does not restrict the reasonable exercise of managerial discretion in moving employees from Group to Group. Carrier stands unrefuted in its assertions that sound business judgment motivated its actions. There is not an iota of evidence that the moves were discriminatory or made out of animus toward any employee. Given these facts we find no violation in the movement of Claimants as such.

Nor is there any showing that Claimants were assigned to perform work in any other positions than the Executive Clerk positions they originally bid into and which we find they occupied both before and after being moved from one Group to another Group. Indeed the record contains no evidence whatever to support the bare assertions that Claimants were required to perform higher rated work. In this connection neither of the Claimants came forward to testify in support of the claim.

Upon careful consideration of the record before us and the Agreement language we have no alternative but to deny the claim for lack of proof. See Awards 14902, 16557, 17068, 17488, 20943.

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

That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulus
Executive Secretary

Dated at Chicago, Illinois, this 14th day of December 1978.