

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22437
Docket Number CL-22300

Louis Yagoda, Referee

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

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-8462) that:

(a) Carrier violated the Agreement at Louisville, Kentucky when it established Position No. 108 with starting time other than specified in BRAC Rule 29 (a).

(b) Claim was filed in favor of Claimants W. B. Newton, D. M. Blake, J. A. Bishop, F. M. McAdams, D. L. Thielemann, and/or their successors for various dates that violation occurs in the amount of \$7.86 per hour for two (2) hours per day, each claimant.

(c) Continuing claim dates and successor claimants to be ascertained by joint check of payroll records.

OPINION OF BOARD: At the time of the actions which led to the instant claims, Carrier maintained two separate staffs of clerks on the same floor of a building at Louisville, Ky. Organization maintains that although segregated both are in the same physical office; Carrier states that they are "at opposite ends of the building" on the same floor. Although the parties treat their respective characterizations as significantly favoring them oppositely, we find no way from the record to determine which is correct. It also appears to us that one statement need not exclude the other and we do not believe that this is the dispositive element in this controversy.

One of these clerks' groupings is that of the "Freight Office," the other, the "Yard Office." For many years, going back to a time when it was located in a separate structure from the Freight Office in a different part of the city and continuing after they moved into one building with the Freight clerks, from 1970,

the Yard Office clerks worked eight hours per shift in a continuous operation with three shifts changing at 7:00 a.m., 3:00 p.m. and 11:00 p.m., pursuant to Rule 28(a) supplemented with rest day fill-ins to complete the 7-day week.

During all of this period, the Freight Office clerks worked on a single shift, Monday to Friday, 8:00 a.m. to 5:00 p.m., with unpaid lunch recess between noon and 1:00 p.m.

On March 4, 1975 Carrier issued a notice abolishing Utility Clerk Position No. 108 which had been occupied on a Thursday through Monday workweek, 3:00 p.m. to 11:00 p.m. as part of the continuous operation of the Yard Office clerks group. Relief Position R-2 for that shift was also abolished by the same announcement, effective same date.

At the same time, by the same announcement, Carrier also established effective the same date, a new position of "IBM Clerk No. 198" to work in the Freight Office with assigned hours of noon to 8:00 p.m., with certain stated duties and "other clerical duties as assigned."

Carrier states - and is not probatively challenged thereon - that this move was due to a paucity of work for Position No. 108 among Yard Office duties and for the more efficient utilization of an additional position in the Freight Office functional grouping.

The parties are in disagreement concerning the extent to which the incumbents in the new position (counting the relief days claimants and extras) have been and are doing Yard Office work while employed in the purported Freight Office grouping. Organization contends that the purported abolishment of one position and the establishment of another does not have functional reality inasmuch as the holder of the new position is doing work largely indistinguishable from that normally and appropriately assigned to the continuous operation Yard Office employees.

Because of this, Organization contends that those assigned in the new positions should be regarded as covered by Rule 29(a).

Rule 29 states:

STARTING TIME

(a) Where work is performed covering the twenty-four hour period, the starting time of each shift will be between 6:00 a.m. and 8:00 a.m., 2:00 p.m. and 4:00 p.m., and 10:00 p.m. and Midnight.

(b) Wherever possible consistent with service requirements, the parties will cooperate to minimize the number of assignments beginning or ending between Midnight and 6:00 a.m.

In Organization's view, Carrier's Louisville, Kentucky clerical operations are at a location "where work is performed covering the twenty-four hour period" and the work of the "new" Position No. 108 is of the type and nature performed on a twenty-four hour basis by the three shifts at such location. Appropriate remedy is regarded as payment of time and one-half rate of pay for the two hours of noon until 2:00 p.m., the latter the regular starting time of the second shift in accordance with Rule 33(a) which provides premium pay at that rate for "service performed in advance of, but continuous with, regular work period."

Carrier concedes that some part of the day's work of the new Position No. 108 in the Freight Office was spent on functions of a kind done by Yard Office employees - at first, the first 3 hours of the last half of the shift, then all of the last 4 hours. It concedes, too, that there has always been some contact with and involvement in Yard Office work by Freight Office employees, but because of this, regards the subject situation as no different from that which was always recognized and accepted by the parties. But it contends that there has been and continues to be a basic and predominant difference in functional character between the two groups. To this must be added the established fact that Yard Office clerks' work has an around-the-clock operational identity, governed by the starting time limitations imposed for such by Rule 29(a), distinct from the Freight Clerks' conventional daily operation.

In Carrier's view, to prevail in this claim, Organization would have to show that Freight Office work is the same class of work done by employees who relieve each other on a continuous basis. It regards as contrary to such joint grouping the simple fact that Freight Office jobs, as a class of work, are not continuous, inasmuch as they are not relieved on second or third shifts.

As an example of the parties' mutual recognition of the distinction between the two groupings, Carrier includes in its exhibits a showing of a position of Assistant Rate Clerk advertised three separate times with a starting time for Freight Office clerk which would not have been proper if that office were subject to Rule 29(a), in line with Organization's present position, but no protest was received. (Organization responds that this was a voluntary exception granted on the basis of its being an "isolated case".)

Finally, confronting the fact that the position in question encompasses, for part of its workday, some work of a kind that is done by the continuous operation Yard Office, in addition to the Freight Office kind not subject to Rule 29(a), Carrier contends that the fact that at each day's starting time of the position, the work performed is freight work, should be controlling in removing the work from governance by Rule 29(a). Yard work is begun at 3:00 p.m.; said time falls within the permissible starting times allowed in 29(a).

In the face of the clear distinctive character recognized over many years by both parties - both at separate locations as well as at the same location - the Board has not been shown any persuasive reason why an employee working in the group that is and always has been operated on a regular daily workday basis, should now have one of its staff members treated as if he were in another group - one that works on an around-the-clock basis.

The fact that the continuous operation Yard Office crew has been diminished by one and the daily operation Freight Office crew has had one added to it, does not alter the separateness of these operations or cause Rule 29(a) to be applicable to the latter.

The fact that the new Freight Office position does some work of a Yard Office nature does not cause the new Freight Office employee who works on a daily basis to become subject to a rule that applies to round-the-clock shift employees, especially in view of the showing here that there has always been some overlap of functions and a general scope rule that does not refine clerical functions into distinctions between the two groupings.

We presume an inference is sought to be made here that there has been some manipulation by management to avoid conformance with 29(a). But, so far as we can determine from the record, the decision for the re-shuffling of these two positions was a permissible and legitimate exercise of managerial judgment based on genuine business needs and not a bad faith maneuver to deprive any employee of benefits.

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

That the Agreement was not violated.

A W A R D

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 15th day of June 1979.