

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23373

Docket Number CL-23171

Joseph A. Sickles, Referee

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

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-8901) that:

1. Company violated the agreement between the parties on March 30, 1975, April 2, 3, 4, 16, 17 and 19, 1975, when after abolishing the Chief Yard Clerk Position at Springfield, Illinois, Company re-assigned the work and duties of the position to Yardmaster B. J. Hagele, who does not come under the Scope of the Clerks' Agreement.

2. Company shall now be required to compensate Clerk C. B. Call, Jr., a day's pay at the rate of \$43.57 per day, for March 30; April 2, 3, 4, 16, 17 and 19, 1975, and further that the work and duties of the abolished Chief Yard Clerk Position be re-assigned to employees covered by the Scope of the Agreement.

OPINION OF BOARD: The Employees assert that the Chief Yard Clerk at Springfield, Illinois marked the Switchmen's Board, called crews and marked the crew calling book. The position was abolished on February 21, 1975, and according to the Employees, on March 30, 1975, the Company commenced requiring that said duties be performed by the Yardmaster. In urging a violation of the agreement, the Employees have stressed Rule 1(d), which emphasizes that scope work belongs to employees covered by the agreement and nothing in the agreement should be construed to permit the removal of such work; and thus, the work could only have been assigned to the Yardmaster under the application of Rule 1(e) (2): _

"(2) In the event no position under this agreement exists at the location where the work of the abolished position or positions is to be performed, then it may be performed by a supervisory employee whose duties encompass supervision of employees covered by this agreement, provided that less than four hours' work per day of the abolished position or positions remains to be performed; and further provided that such work is incident to the duties of such supervisory employee. This provision shall not apply to work assigned to employees covered by the former Telegraphers' Agreements; such work to be reassigned to other employees covered by this agreement."

But, there were existing clerical positions remaining at the location so that Rule 1(e)(2) could not have been utilized until after the application of Rule 1(3)1 (Work to be reassigned to other clerical positions at the location). Moreover, the Organization insists that Yardmasters did not perform the disputed work prior to the abolishment of the Clerk position.

To the contrary, the Carrier asserts:

"The yardmaster makes and always has made the assignments from the seniority list and the clerk has written them in the crew book and hangs tags on the crew board. There has been no change in this procedure. The yardmaster did not assume any duties of the abolished position of chief yard clerk at Ridgely."

During the latter stages of the consideration of the dispute on the property, the Manager of Labor Relations advised the Organization that it was clear that the parties could not resolve the claims by relying on contradictory statements concerning past performance of the work in question, and he proposed that the parties examine the Switchmen's and Engineer's crew marking books to determine - from the handwriting - whether Clerks or Yardmasters did the marking on the dates that would be pertinent to the claim. In this regard, the Carrier presented certain documents which, it argues, demonstrates that the Yardmaster in question did some or all of the marking on certain pages prior to the abolishment of the position in question.

In response to the Carrier's assertions mentioned above (in addition to the other factual disputes of record) we find that the Organization does not concur that Yardmasters, in fact, did the "marking" in question prior to the Chief Yard Clerk position being abolished, and the Organization asserts that the handwriting in question was that of the former Chief Yard Clerk who occupied the position.

The Organization, in its submission to this Board, asserts that the issue to be determined is actually whether any of the work of the Chief Yard Clerk position, which was abolished on February 21, 1975, was assigned to the General Yardmaster who, of course, does not come within the scope of the BRAC Agreement. In presenting its arguments to us, the Carrier has urged that the work of marking the books in question is not work which was exclusive to clerks, but in any event, the Carrier urges that the clerks have not demonstrated that any work that was done by them before the effective date of the agreement was taken from them.

We have noted the Organization's argument that this type of a dispute is not one in which the "exclusivity" doctrine properly surfaces, and that the Organization is not held to the rigorous tests of that theory; but rather, it is only necessary to show that work has not been properly re-assigned in accordance with the specific wording of the contract. In this regard, the Organization relies on, among others, Awards 21452 and 20535.

We do not, in this Award, dispute the findings of those prior cited resolutions. We do have difficulty, however, concerning the Organization's burden of establishing to us a showing that the agreement was violated.

The record is rather long and complex. However, we have reviewed and re-reviewed the record at length in an effort to establish the precise factual events and factual background so as to permit us to issue an appropriate award. However, after a significant period of time, we are still unable to precisely pinpoint the events which prompted this dispute, nor are we able to discover, from a review of the documents of record which are properly before us, the role of the various parties prior to the abolishment of the position.

This Board is not as confident as the Carrier that the documents of record, when closely analyzed, really produce no significant factual dispute. Rather, we feel that there are some direct factual disputes evidenced by the various statements, positions and counter positions in the record.

In the final analysis, we are unable to reach a factual conclusion so as to formulate an award based upon established facts and, accordingly, we will dismiss the claim for failure of proof. Because of the nature of the outcome of this award, of necessity, we do not comment upon other legal assertions and counter assertions made by the parties.

The Claim will be dismissed for failure of proof.

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 Claim be dismissed.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulson

Executive Secretary

Dated at Chicago, Illinois, this 28th day of August 1981.