

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25242
Docket Number CL-25162

Edward L. Suntrup, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
PARTIES TO DISPUTE: (
(Elgin, Joliet and Eastern Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9797)
that:

1. Carrier violated the effective Clerks' Agreement when it abolished the position of Assistant Supervisor-Pensions and Insurance effective November 1, 1982, and assigned the duties thereof to a position not covered by the Scope of the effective Agreement.

2. Carrier shall now compensate Mr. Ben Tekel and/or his successor or successors in interest; namely, any other employe or employes who have stood in the status of senior furloughed employe and as such were adversely affected, eight (8) hours' pay at the pro rata rate of the position of Assistant Supervisor-Pensions and Insurance, to be established through negotiations, commencing on November 1, 1982, and continuing for each Monday through Friday thereafter that a like violation occurs.

OPINION OF BOARD: By letter dated November 19, 1982 the Organization filed a pay claim on behalf of senior furloughed employe B. Tekel "and/or his successor or successors in interest" on the grounds that the Carrier was in violation of the current Agreement and of the Memorandum of Agreement (Supplement No. 21) signed by the parties on May 1, 1982.

The parties to this dispute agreed on May 1, 1982 to add to the current Agreement under paragraph (d) of Rule 1 a number of position titles including that of Assistant Supervisor of Pensions and Insurance, Joliet, Illinois. This Memorandum of Agreement, paragraph (d), specified that the new positions to be covered by the working Agreement, including the one at bar, would come "under the scope of the basic Agreement" as of the date of its signature, including "all duties and work performed by the incumbents of these positions".

The instant case arose when the Carrier abolished the position of Assistant Supervisor of Pensions and Insurance, effective November 1, 1982, and laid off the incumbent "as a result of drastic declines in (the) Carrier's business". The contention of the Organization is that in so doing the Carrier was in contravention of Rule 1 of the current Agreement, as well as Rules 8, 9 and 19 of the same Agreement, because the work assigned to the position of Assistant Supervisor was given to the Supervisor of Pensions and Insurance which was a position not covered by the current Agreement.

Because of the limitations found in the Memorandum of Agreement of May 1, 1982, paragraph (a), and since the incumbent was in the position at bar when it was abolished, Rules 8, 9 and 19 of the current Agreement, cited in the original claim, are herein ruled non applicable as basis for relief. The instant case centers on whether the Carrier was in contravention of Rule 1 (Scope) of the current Agreement when it abolished the Position of Assistant Supervisor of Pensions and Insurance on November 1, 1982.

The pertinent subsection of Rule 1, paragraph (a), of the current Agreement applicable to the instant case is the following:

"These Rules shall govern the hours of service and working conditions of all employees engaged in the work of the craft or class of clerical, office, station and storehouse employees. Positions or work coming within the scope of this agreement belong to the employees covered thereby and nothing in this agreement shall be construed to permit the removal of positions or work from the application of these rules
...."

The factual question to be resolved in the instant case is whether the position of Supervisor of Pensions and Insurance coopted the work of the Assistant Supervisor of same after November 1, 1982 when the latter position was abolished by the Carrier. To answer that it is necessary to ascertain what the duties of each of these positions were prior to the date of abolishment. In his letter of December 31, 1982 the Carrier's Comptroller wrote to the Organization's General Chairman:

(t)he Assistant Supervisor Pensions and Insurance position had historically assisted the Supervisor Pensions and Insurance position ... in the performance of her duties."

How exactly did this Carrier historically operationalize the relationship between these two positions when the Assistant Supervisor "assisted" the Supervisor? A search of the record finds an answer to that question in the letter of the Carrier's Director of Labor Relations of November 22, 1982 to the Organization's General Chairman. In that letter the Director of Labor Relations explains:

"(f)or all practical purposes, they (the Assistant Supervisor and the Supervisor) perform the same work." (Employees' Exhibit D)

This observation found in the Carrier's letter of November 22, 1982, is reiterated by the Carrier in its Rebuttal to the Board. In that Rebuttal the Carrier states: "(t)he truth of the matter is both positions essentially perform the same work". The Carrier goes on to argue in its Rebuttal that: "(w) when the work load had decreased to such an extent that the duties---at least to the satisfaction of Management---could be performed, as had been done in the past, by only the Supervisor, the Assistant's position was eliminated" (emphasis in the original). The problem with this line of reasoning is that it is not duly cognizant of the contractual obligations assumed by the Carrier on May 1, 1982, when it signed the Memorandum of Agreement with the Organization. After that date---upon its own operationalization of the duties of the position here at bar which were completely interchangeable with those of the Supervisor as clearly stated in the record a number of times by the Carrier---the Carrier no longer had the unilateral right to shift work from a protected position to a non-protected one. It could be, hypothetically, that the Assistant Supervisor's job of "historically assist(ing)" the Supervisor lay in the performance of certain clerical duties only incidental to that of the Supervisor. If such were the case, this Board would have no problem denying this claim on merits in accordance with precedent set by Second Division Awards 2674, 4559, and Third Division Awards 19894, 20322. The Carrier itself, however, rules out any such hypothesis by its insistence in the record that the work of the Assistant Supervisor is "practically" and "essentially" the same as that of the Supervisor.

The job description of the title of Assistant Supervisor Pension and Insurance Administration, Standard Code 941, Location at Joliet, Illinois was provided to the Organization by the Carrier on May 17, 1982, in accordance with subsection (d) of the Memorandum of Agreement of May 1, 1982. This description reads:

*Primary Functions

Provides clerical service for the administration of Company-sponsored Pension and Insurance Plans.

Responsibilities and Authorities and Accountabilities

Prepares pension applications for submission in compliance with established policies.

Processes life insurance claims for submission.

Explains and informs designated employees in other departments of the company who act(s) as local contact as to pension and insurance provisions.

Confers with employees and advises them of retirement provisions of Company-sponsored pension plans and Railroad Retirement annuities.

Prepares records and reports as required on Railroad Retirement Supplemental Annuity Tax.

Expedites claim payments for employees or retired employees for those insurance plans where claims are processed and paid by an Insurance Company.

Explains Supplemental Sickness Benefits Plan to covered employees."

The record does not provide any explicit description of the duties of the job title of Supervisor Pension and Insurance Administration nor is that necessary for purposes of information since that description must read, according to reasoning used by the Carrier, exactly the same as the description of the job title of Assistant Supervisor cited above.

Since, therefore, the position of Assistant Supervisor was abolished on November 1, 1982, because of "reduced business volume" no other conclusion is warranted except that the work which both of these employees were performing was shifted to the position of Supervisor in violation of such prohibitions explicitly found in Rule 1 of the current Agreement. It appears indisputable to the Board, from evidence of record herein cited, that the Carrier shifted work from a protected position to a non-protected one. Numerous Awards of this Board have established the precedent that a Carrier may not arbitrarily take work covered by the Scope of an Agreement and assign such work to non-covered positions (Third Division Awards 752, 1122, 1210, 13807).

The claim is sustained. Effective November 1, 1982, and continuing for each Monday through Friday thereafter, the Carrier shall compensate eight (8) hours' pay at the pro rata rate Mr. B. Tekel and/or his successors in interest. Mr. Tekel, as Claimant, shall be paid at the pro rata rate in effect prior to November 1, 1982, since he never legally vacated such position. Successors of interest, as stipulated in the Statement of Claim at (2.) shall be paid a rate in accordance with subsection (d) of the Memorandum of Agreement of May 1, 1982.

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

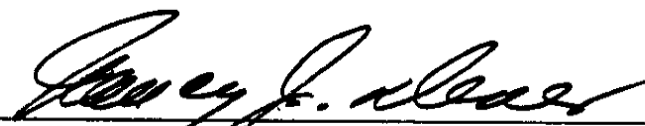
That the Agreement was violated.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 31st day of January 1985.

