

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25407
Docket Number CL-25245

George S. Roukis, Referee

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

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

1. Carrier violated the Agreement between the Parties, June 29, 30, July 1 and 2, 1982, account regular incumbent of the position of Clerk-Operator, Oakfield, Maine, abolished and said work and duties were performed by the Supervisory Agent.

2. Carrier shall compensate G. W. Lawlor, eight (8) hours pro rata pay per day for each day for June 29, 30, July 1 and 2, 1982, account on said dates Scope work and duties were performed by Supervisory Agent in violation of the Agreement.

OPINION OF BOARD: Organization contends that Carrier violated the Controlling Agreement when it abolished Claimant's Clerk-Operator's position at Oakfield, Maine on June 29, 30, July 1 and 2, 1982, and assigned his regular duties to a Supervisory Agent. Organization asserts that Claimant did not lay off on his own volition and contests Carrier's position that it was compelled to effectuate such changes because of a dramatic curtailment of operations. Organization avers that Carrier improperly assigned work that was properly covered by the Scope Rule and charges that Carrier violated Rule 2(a) which provides for a definition of a Clerk. Organization also cites several other Agreement Rules which it maintains were violated including Rules 1, 7, 9, 12, 18 and 19.

Carrier contends that when it was informed on June 2, 1982, that its major customer, the Great Northern Paper Company, would completely close its production and shipping operations from June 26, 1982, through July 5, 1982, it was compelled by this exigency to curtail most of its operations and program work for that period. It asserts that it promptly apprised the Organization's General Chairman of its operational decision, who in turn did not object to this contemplated action; and later issued a circular letter, dated, June 17, 1982, advising it was temporarily suspending most service station positions. It observes that again Organization did not challenge its action; and notes that Claimant elected to lay off rather than take his available vacation during the time his position was suspended. It asserts that the functions of yard clerks listing, as well as various other clerical duties, are routinely performed on the property by Supervisory Agents; and disputes Organization's assertions of work exclusivity. In particular, it avers that the mediated negotiations in 1981 which addressed Organization's proposal to amend the Scope Rule led to an Agreement that recognized the work of Supervisory Agents was primarily clerical in nature, and further converted these employees to dues paying members of the Organization. The parties at the time agreed that all Supervisory Agents would be immediately subject to the Union Shop Agreement and would thereafter become fully covered employees upon attrition of incumbents.

In our review of this case, we concur with Carrier's position. We find no evidence that Claimant exclusively performed the contested duties performed by the Supervisory Agent, nor any restriction on the tasks and duties that can be performed by Supervisory Agents. We find no evidence that the Supervisory Agent handled train orders on the claimed dates, nor evidence showing that the checking of yards and the listing of waybills and cars was not performed by other employees. In order to prevail in this dispute Organization was obligated to demonstrate persuasively that specific protective rules were patently violated or show that explicit systemic work practices were disregarded. We are surprised that Organization referenced part of Rule 1(a) that is no longer applicable since its deletion in 1981 was necessary to permit Supervisory Agent positions to become covered by the Agreement. Upon this record we must conclude that the Agreement was not violated.

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 not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Lever - Executive Secretary

Dated at Chicago, Illinois, this 15th day of April 1985.