

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25568
Docket Number CL-25510

Frances Penn, Referee

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

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9876)
that:

1. Carrier violated the effective Clerks' Agreement when, effective March 28, 1983, it transferred its clerical work in connection with the offices of Division Engineer and Manager-Work Equipment from Joliet, Illinois to Gary, Indiana without prior notice and Agreement;

2. Carrier shall now compensate Ms. Joan Golf, and/or her successor or successors in interest; namely, any other employe or employes who have stood in the status of senior furloughed employe and as such, has been adversely affected; for eight (8) hours' pay at the pro rata rate of Position MW-616 commencing on March 28, 1983, and continuing for each and every day thereafter, Monday through Friday, that a like violation occurs.

OPINION OF BOARD: The Claimant is Ms. Joan Golf, a steno-clerk and/or her successor or successors. The Carrier's Maintenance of Way Department has offices at Gary, Indiana and Joliet, Illinois. These locations are approximately 45 miles apart; they are in the same seniority district. Prior to March 25, 1983 the Manager of Work Equipment was headquartered at Joliet, Illinois. Position MW616 (Steno-Clerk) at Joliet performed stenographic work primarily for the Manager of Work Equipment.

Effective April 1, 1983, the headquarters of the Manager of Work Equipment was located at Gary, Indiana. On March 17, 1983 Employees were notified by bulletins that Position MW616 at Joliet and Position MW668 at Gary were being abolished. The principal duties of MW616 were:

"Clerical and stenographic work in office of Division Engineer, including Track, B&B and S&WE subdepartment records and reports. Maintain communication center, relaying messages to and from all field forces; and other miscellaneous clerical duties as directed. Applicant must be proficient in taking dictation and have a minimum net typing speed of 50 words per minute."

The duties of Position MW668 were:

"Preparation of daily work and time reports in S&WE office, dispatching work equipment and miscellaneous clerical work."

On March 21, 1983, a bulletin was issued which gave notice that Position MW682 (Steno Clerk) was to be established at Gary, Indiana. The duties of this position were:

"Clerical and stenographic work in office of Division Engineer, System, including Track, B&B and S&WE records and reports; and other miscellaneous clerical duties as directed. Applicant must be proficient in taking dictation and have a minimum net typing speed of 50 words per minute."

The Organization contends that when the Carrier abolished Position MW616 and established Position MW682, it transferred work from Gary to Joliet. The Organization argues that because no notice was given by the Carrier of its intent and because the Carrier did not request a conference to negotiate an agreement, the Carrier violated Rule 5 of the Agreement. Rule 5 states in part:

"It is agreed that positions and/or work within a given seniority district cannot be transferred to another seniority district unless by prior agreement between the Carrier and the General Chairman.

"When positions or work in one office or department located in one city are to be transferred to another office or department in another city in the same seniority district, conferences will be held at least ninety (90) days in advance with the General Chairman prior to the transfer for the purpose of endeavoring to negotiate an agreement to cover, so that employees affected may be given proper consideration."

The Organization cites other instances in which the Carrier gave notice and entered into agreements pursuant to Rule 5 when transfers of work or positions from one city to another within the same seniority district were made by the Carrier.

The Carrier sets forth a number of different contentions relating to the merits of the Claim and the way it was handled procedurally to persuade this Board to deny the Organization's claim. The Carrier argues that the February 7, 1965, National Job Stabilization Agreement as amended permits unilateral transfer of work within the same seniority district, under Article I, Section's 3 and 5.

Article I, Section 3 states:

"In the event of a decline in a carrier's business...a reduction in forces in the crafts represented by each of the organizations signatory hereto may be made at any time during the said 30-day period below the number of employees entitled to preservation of employment under this Agreement..."

The Carrier contends that MW616 was not transferred, but was abolished for business reasons and that therefore the Carrier was not contractually obligated to keep it. According to the Carrier, the new position MW682 was assigned the work which remained after the abolishment of MW616 and MW668.

A review of the entire record convinces this Board that the pertinent question is whether or not the Carrier transferred the work of abolished Position MW616. It is the well-established principle set forth in numerous Awards that the moving party has the burden of proving all the essential elements of its case. (See, for example, Awards 20026 and 20147). In this case the Organization has not met this burden. The Organization has failed to produce any substantial evidence to show that the work of Position MW616 was transferred by the Carrier. The Organization asserts that the Carrier transferred the work to Gary but this assertion is not backed by evidence which proves to this Board that it is true. Therefore, the claim must be denied. The Board finds the applicable Rules were not violated by the Carrier.

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

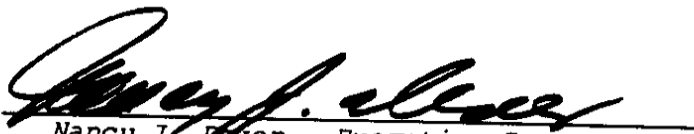
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 26th day of July 1985.