

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25571
Docket Number CL-25088

George S. Roukis, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
PARTIES TO DISPUTE: (
(The Atchison, Topeka and Santa Fe Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9718)
that:

(a) Carrier violates the Agreement at Olathe, Kansas, when it requires or permits an Official (Appointed Agent) to perform duties which were assigned to and an integral part of the duties of Agent TO Clerk Position 6124, prior to that position being abolished, and

(b) The duties of Agent TO Clerk Position 6124, which are now being performed by an employee not covered by the Agreement (Appointed Agent) shall now be restored to the Agreement, and

(c) R. F. Hummingbird shall now be compensated eight hours pro rata at the rate of former Position 6124 (plus subsequent wage increases) for each work day of that position, commencing December 21, 1981, and continuing until the work removed from the scope of the Agreement is restored thereto and the violation ceased.

OPINION OF BOARD: The Organization contends that when Carrier abolished Agent to Clerk Position No. 6124, effective November 1, 1981 at Olathe, Kansas and appointed the incumbent of that position to a newly created non-agreement-covered supervisory position (Manager - Regional Freight Office), Carrier violated the Controlling Agreement, particularly Rules 1, 2-E, 2-F, 5, 11 and 43. In effect, it asserts that the Incumbent of the newly created position continued to perform the duties of his prior abolished position which consisted of supervising and directing other Employees at Olathe, and directing the Carrier's Agency business and functions. The Organization argues that pursuant to Rule 1 which reserves the work of the Craft to covered Employees and the protective limitations over the removal or transfer of work provided by Rules 2-E and 2-F, Carrier is estopped from assigning work of an abolished position to a non-agreement-covered Employee. Rules 2-E and 2-F are referenced as follows:

"2-E. Positions or work within Rule 1 - Scope of this Agreement belong to the employees covered thereby and nothing in the Agreement shall be construed to permit the removal of such positions or work from the application of the rules of the Agreement."

"2-F. When a position covered by this Agreement is abolished, the work assigned to same which remains to be performed will be reassigned to other positions covered by this Agreement, unless such reassignment of work would infringe upon the rights of other employees."

The Organization notes that Rule 2-F was purposely incorporated into the Agreement on June 1, 1980 to address similar situations which previously were unprotected, since the Scope Rule was judicially deemed general in nature. (See Award No. 1 of Public Law Board 2281.) It maintains that the Supervisory Duties of the abolished position were still being performed by the Incumbent, albeit, under the guise of the newly created Managerial Position. In its submission to the Division, the Organization observed that Carrier's Operating Rule 910 conveyed General Supervisory Authority to Station Agents.

Carrier argues that Rule 2-E is not part of the Scope Rule and applies only to positions or work of the Clerk's Agreement covered by Rule 1. It asserts that the adoption of this Rule was not intended to preclude position abolishments consistent with the requirements of Rule 16, nor intended to prevent or restrict the mechanization of work. It avers that in accordance with plans to blanket its physical operations with 85 Regional Freight Offices and 159 Regional Yard Offices, it was required to implement these changes in order to develop a user oriented Computer System to better manage its property. It asserts that with larger geographical territories and the derivative correlative responsibility of supervising Operating Clerical Employees at various satellite points, it was absolutely essential to create the new Supervisory positions. Carrier maintains that the Supervisory activities of the new Managerial Position have never been performed by Clerks on its system, and notes that the Clerical work of the abolished position No. 6124 was transferred to Position Nos. 6024, 6025 and 6289. Moreover, it asserts that the Organization has never identified which duties were reassigned, nor sustained its obligation to show that such duties were exclusively reserved to the Clerks.

In considering this case, the Board concurs with Carrier's position. In a recent Third Division Award involving the same parties and the same basic issue, the Board held that it was not an Agreement violation when a Clerical Position was abolished at Abilene, Kansas and concurrently a Supervisory Position (Manager - Regional Freight Office) was established at the geographical point. (See Third Division Award No. 25003.) In that dispute, the Organization asserted that the Supervisory Position absorbed a portion of the duties of the abolished Clerk's Position which specifically involved the same general Supervisory duties claimed in the instant dispute. The Board observed that where a Scope Rule violation is asserted the Petitioning Party has the obligation of establishing Systemwide work exclusivity. In a companion Award involving the same Parties and an analogous type claim, the Board again held that it was not an Agreement violation when a Clerical Position was abolished at McPherson, Kansas and a newly created Supervisory Position was established at that situs. (See Third Division Award No. 25125.) In both cases, the Board reasonably posed a fundamental test, namely, that where work was contested, a demonstration

of work exclusivity must be established. In the case herein, there is nothing in the fact patterns that would warrant a variant interpretation or a fresh look at the issue. The same conceptual principle undergirds all three cases. To be sure, the incorporation of Rules 2-E and 2-F have qualified Rule 1, otherwise it would be redundant to write reiterative language. However, even an assertion of work jurisdiction under Rule 2-E would necessitate a showing of exclusivity, if challenged. During its handling on the property, the Organization did not detail the specific Supervisory duties purportedly reassigned. It did in its submission refer to Carrier's Operating Rule 90 which indicated the Supervisory activities of Station Agents. While this response was belated and arguably new material, the question of exclusivity is not mooted. By way of comparison, the new Manager's position's supervisory responsibilities appear to encompass quantitatively and qualitatively broader functions. Upon the record and in view of the controlling effect of Third Division Award Nos. 25003 and 25125, we must deny the claim. As a judicial body, we are compelled to observe the principle of Stare Decisis.

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

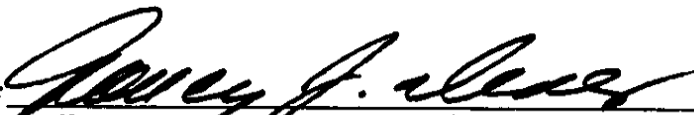
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

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