

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25575  
Docket Number CL-25298

Edward L. Suntrup, 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-9822) that:

1. Carrier violated the effective Clerks' Agreement when, effective July 20, 1982, it abolished the 12:00 Midnite to 8:00 A.M. Input/Output Technician (IOT) position at Joliet, Illinois, and thereafter transferred the work in connection therewith to positions in Gary, Indiana;

2. Carrier shall now compensate Senior Furloughed Employee C. L. Holley and/or her successor or successors in interest; namely, any other employe or employees who have stood in the status of Claimant as senior furloughed employe and, as such, have been adversely affected, for eight (8) hours' pay at the pro rata rate of an IOT position commencing on July 20, 1982, and continuing for each and every day thereafter, seven days per week, that a like violation occurs.

OPINION OF BOARD: A pay claim was filed by the Organization on September 15, 1982, on behalf of C. L. Holley and her "successor or successors of interest". The claim alleges that the Carrier violated current Agreement Rule 5 and Supplement No. 10 when it issued Bulletin 96 on July 13, 1982, and abolished position JT-576 at Joliet, Illinois.

This claim by the Organization centers on the specific allegation that the abolishment of the position in question implied the transfer of work from Joliet, Illinois to Gary Mill Yard. If such occurred it would have implied, according to the Organization, the transfer of work from one seniority district (No. 3) to another (No. 4) in contravention of the Rule and Supplement cited above. The Board has closely studied the record exchanged on property, including the Rule and Supplement in question. The application of the latter to the instant dispute must hinge on the firmly established fact that work was transferred as alleged when position JT-576 was abolished.

The Organization states, on property, that "(i)t is our understanding that the work of which we complain has been performed at Gary Mill Yard where input/output positions were retained". Position JT-576 at Joliet had assigned hours of 12:00 midnight to 8:00 A.M. According to the Carrier, when it abolished this position it also concurrently abolished the same type of position at Gary which had the same assigned hours. According to the Carrier, it "...did experience reductions in business volume and did abolish, concurrently, positions JT-576 (IOT in Joliet) and GT-557 (IOT in Gary), both working 12 m.n. to 8 a.m., seven days per week. Your office was advised of these abolishments. The Carrier did not 'thereafter ... assign certain IOT duties to employees in Gary, Indiana' relating to set offs for trains departing Joliet".

Although the National Railroad Adjustment Board and various Public Law Boards have held that assertions by either party are not the same as proof, such Boards have also established the precedent that the burden of proof for a claim rests with the party filing the claim (Second Division Awards 5526, 6054; Fourth Division Awards 3379, 3482; Public Law Board 3696, Award 1). Nowhere in the record does the Organization provide evidence of sufficient probative value to warrant conclusion that the alleged transfer of work took place despite abolishment of position JT-576 at Joliet. Assertions are no substitute for proof according to substantial evidence criteria. The parties to the dispute spend some time in their exchanges on property discussing the exact meanings of their Agreement(s) relative to the transfer of work from one seniority district, roster, etc. to another. Barring proof that such transfer actually took place in the instant case, however, the Board is not warranted to make any conclusions with respect to the alleged Rule violations at bar.

Any and all materials and arguments relative to this case which have been introduced in the submissions by either party which were not exchanged on property are untimely and inadmissible (Third Division Awards 20841, 21463, 22054; Fourth Division Awards 4112, 4136, 4137).

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.

