

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25920
Docket Number CL-25829

Charlotte Gold, Referee

PARTIES TO DISPUTE: ((Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employes
(The Chesapeake and Ohio Railway Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood (GL-9895) that:

(1) The Carrier has violated Rule 23 and others that may apply of General Agreement No. 9, when they arbitrarily transferred and assigned clerical duties, (Preparation of Miscellaneous Charge Bills - Form HJ-27-C for cleaner coal), to the position of Operator Clerk C-157, at Meadow Creek, W. Va., effective April 29, 1980.

(2) The Carrier will now allow the incumbents of Operator Clerk C-157, Meadow Creek, W. Va., now assigned to R. A. Addleman, rate of pay \$72.86 per day, and the incumbents of Cashier, Rate and Bill Clerk C-24, Hinton, W. Va., now assigned to J. C. Spicer, rate of pay \$74.50 per day, 90 minutes for April 29, 1980, 60 minutes for May 3 and 28, 1980, 30 minutes for May 8, 14, 15, 16, 19, 20, 22, 23, June 2, 5, 6, 11, and 12, 1980, at the pro rata rate and in addition to all other pay received for those dates."

OPINION OF BOARD: In 1980, a new coal cleaning plant was opened at Meadow Creek, West Virginia. On April 29, Carrier assigned the duties of preparing miscellaneous charge bills (assessing charges for handling raw coal from the mine to the cleaning plant) to the position of Operator-Clerk at Meadow Creek.

The Organization alleged that by so doing, Carrier arbitrarily and unilaterally transferred those duties from employes located in Hinton, West Virginia, in violation of Rule 23 and other Rules of the General Clerical Agreement No. 9. The Organization pointed out that Hinton was an agency station, while Meadow Creek was not, and that all railroad agency work for Meadow Creek had been performed at Hinton.

Rule 23 reads as follows:

"RULE 23 - CONSOLIDATIONS

Consolidations, divisions, or reorganizations of one or more offices, departments, or seniority rosters, or parts thereof, shall be handled by the Management and the General Committee of the Brotherhood through notice, conference, and agreement as provided in the Intra-Carrier Understanding of January 1956, to apply no less favorable conditions than the so-called Washington Agreement of May 1936, and subsequent understandings in connection therewith, and the Stabilization of Employment Agreement of February 7, 1965."

In evaluating this case, this Board must first determine whether there has been any assignment reserving all freight agency services for non-agency stations to employes at Hinton and whether, concurrently, there is any requirement that only agency personnel handle the work of a nonagency. Finally, we must consider whether Rule 23, Consolidations, is applicable to the facts of this dispute.

As the Organization well knows, it has the burden of proving its case when it alleges a Rule violation. Based upon a review of the entire record, we must conclude that it has not adequately carried its burden in this instance.

The Organization rests its case in part on the contention that the preparation of charge bills was a normal function performed by employes located at Hinton for all agency stations, yet the record is devoid of any evidence that indicates that freight agency services for non-agency stations are reserved exclusively to Hinton employes. The Organization could not point to any Rule that indicates that only agency personnel may handle the work of a non-agency. Carrier on the other hand, cited the presence of an incumbent Operator Clerk at Meadow Creek as support for its position and noted that any location can change from agency to non-agency standing, depending on the volume conducted. From this we may infer that should business at Meadow Creek increase, its status could change.

From our reading of Rule 23, we find that it is designed in part to provide employes with certain protections in regard to their current work in the event of consolidations, divisions, or reorganizations. In the instant dispute, we find no evidence that any office, department, or seniority roster was consolidated, divided, or reorganized, or that work that was being performed was transferred elsewhere. Put another way, the work of no Clerk at Hinton was in any way diminished by the assignment made at Meadow Creek.

On numerous occasions in the past, Awards of this Division have affirmed Management's right to determine how, when, and where work will be performed, subject only to limitations imposed by the parties' Agreement. In the instant dispute, we find no Agreement support for the Organization's position and we must conclude that the record is devoid of the proof necessary to support its factual allegation.

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 Employes involved in this dispute are respectively Carrier and Employes 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

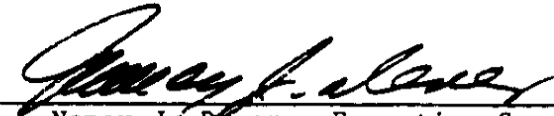
That the Agreement was not violated.

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 February 1986.