

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26049
Docket Number CL-25807

John B. LaRocco, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline, Steamship Clerks,
(Freight Handlers, Express and Station Employes
(
(Northeast Illinois Regional Commuter Railroad
(Corporation

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood
(GL-9900) that:

1. The Northeast Illinois Regional Commuter Railroad Corporation violated Rule 1, Scope of the current Agreement when, effective December 31, 1982, it established a Purchasing Department and staffed the positions in the Department with individuals not working under the Agreement.

2. The Northeast Illinois Regional Commuter Railroad Corporation violated Rule 10, Bulletins - Stores Department and Rule 14, Numbering Bulletins of the current Agreement when, effective December 31, 1982, it staffed three positions of Senior Buyer, one position of Buyer and one position of Inventory Assistant without bulletining the jobs as required by the Agreement.

3. The Northeast Illinois Regional Commuter Railroad Corporation violated Rule 3, Seniority Datum of the current Agreement when, effective December 31, 1982, it assigned Mr. D. F. Winer to a Senior Buyer position, Mr. F. E. Smalalz to a Senior Buyer position, Mr. A. Bruce Darin to a Senior Buyer position, Mr. Ed Dunigan to a Buyer position and Ms. Ellen Petrick to an Inventory Assistant position, none of whom had heretofore established seniority under the Agreement.

4. The Northeast Illinois Regional Commuter Railroad Corporation violated Rule 68, New Positions - Rates of Pay of the current Agreement when, effective December 31, 1982, it created three positions of Senior Buyer, one position of Buyer and one position of Inventory Assistant and did not fix the rate of pay in 'conformity with those of existing positions of similar work and responsibility' and did not notify the Local Chairman of the rate applied to the job.

5. The Northeast Illinois Regional Commuter Railroad Corporation violated Rule 69, Adjustment of Rates of the current Agreement when, effective December 31, 1982, established position were discontinued and new ones were created under different titles covering relatively the same class of work which had the effect of reducing rates of pay and/or evading the application of the Rules.

6. The Northeast Illinois Regional Commuter Railroad Corporation shall now be required to bulletin all positions in the Purchasing Department to employees covered by the Agreement, establish rates of pay as set forth in the Agreement and notify the Local Chairman.

7. The Northeast Illinois Regional Commuter Railroad Corporation shall now be required to compensate Mr. Arthur W. Travis eight (8) hours' pay for each workday at the rate of the last position held or the rate of a Senior Buyer, whichever is higher, commencing December 31, 1982 and continuing until such time as all positions in the Purchasing Department are placed under the Agreement and filled by the bulletining process as provided in the Agreement.

8. The Northeast Illinois Regional Commuter Railroad Corporation shall now be required to compensate the four (4) senior Rock Island employees that have not secured railroad employment as provided in the 'Umbrella Agreement,' eight (8) hours' pay for each workday at the rate of the last position held (plus subsequent increases) or the rate of Senior Buyer (the two senior individuals) or the rate of Buyer (the next senior individual) or the rate of Inventory Assistant (the junior of the four individuals), whichever is higher, commencing December 31, 1982 and continuing until such time as all positions in the Purchasing Department are placed under the Agreement and filled by the bulletining process as provided in the Agreement".

OPINION OF BOARD: On March 20, 1980, the Interstate Commerce Commission issued Directed Service Order No. 1437. The Order, which was permissive, allowed the (Illinois) Regional Transportation Authority (RTA) to operate unsubsidized Commuter passenger service over the Chicago to Joliet, Illinois rail line of the bankrupt Chicago, Rock Island and Pacific Railroad Company (Rock Island). Pursuant to a later enacted federal statute, the Directed Service Order was extended to May 29, 1982. In accord with Directed Service Order No. 1437 as well as Section 2.18(c) of the Illinois Regional Transportation Authority Act, the RTA was to hire former Rock Island Employees "...necessary to provide the authorized service..." and to insure "...a continuation of their existing collective bargaining Agreements until the provisions of said agreements can be renegotiated..." Thus, the January 1, 1974 Rock Island Clerical Working Agreement remained in effect.

The RTA retained the Chicago and North Western Transportation Company (C&NW) to manage day to day Commuter Service Operations. The C&NW negotiated a March 22, 1980 Memorandum of Agreement with the Organization (and other Rail Labor Organizations) which expressly stated that the C&NW would "...hire only those employees necessary for the operation of the Rock Island commuter service". The Carrier, a State Governmental Corporation, assumed control of the former Rock Island commuter on June 1, 1981. Therefore, the RTA terminated its principal-agent relationship with the C&NW. The Carrier subsequently commenced negotiations with the Organization over the terms and conditions of a new Collective Bargaining contract but the parties had not reached an Agreement before the instant dispute arose.

In Fall, 1981, Claimant held a Maintenance-Steno Clerk position at the Rock Island's LaSalle Street Station. Immediately before the station was demolished, Claimant's job was transferred to the Engineering Department in Blue Island, Illinois. On March 1, 1982, the Carrier amended Claimant's job title (but not his job content) to Material Inventory Clerk. A portion of Claimant's duties were devoted to making minor purchases of Signal Department materials. The Carrier abolished Claimant's position effective December 31, 1982.

On or about October 1, 1982, the Carrier established a Materials Department which was authorized to purchase material and equipment for the Carrier's entire system. The Carrier staffed the newly created department with former RTA workers. According to the Carrier, these individuals had previously performed purchasing functions for the Carrier even though they were employed by the RTA. The Carrier did not advertise the Senior Buyer, Buyer and Inventory Assistant positions in the Material Department. It unilaterally appointed persons to fill the five new purchasing positions.

The Organization initiated this Claim on February 28, 1983. Alleging a Scope Rule violation, the Organization sought to place Claimant on one of the new Senior Buyer positions and requested that the Carrier pay Claimant eight hours of pay for each work day. Later, on the property, the Organization demanded that the Carrier bulletin the Material Department positions and permit the former Rock Island clerical workers on Seniority District No. 18 to bid on the jobs under the applicable provisions in the January 1, 1974 Agreement (although some of the disputed positions are excepted or partially exempt jobs).

In their respective submissions the parties have extensively addressed the complex contract Interpretation issues which, upon a superficial analysis, might govern the outcome of this case. In addition, the Carrier contends that this conflict is best characterized as a major dispute outside the scope of our jurisdiction.

However, before we may interpret and apply the pertinent Agreements, the Organization must present probative proof of the salient facts underlying its Claim. The thrust of the Organization's Claim assumes that the purchasing duties and tasks formerly performed by Claimant were transferred to the Carrier's new Material Department. Aside from the Organization's bare assertions, the record does not contain any evidence that the Carrier shifted Claimant's limited and minor purchasing duties to the new department. Indeed, there is no proof that Claimant's job was abolished due to a transfer of work. The Carrier created the Material Department three months before it abolished Claimant's position. In summary, the Organization failed to factually prove a cause and effect connection between the loss of Claimant's job and the nature of the purchasing work performed in the Material Department. Therefore, we need not decide if the disputed work belongs exclusively to Employees covered by the applicable clerical Agreement.

Finally, the Organization urges this Board to order the Carrier to advertise all purchasing positions in the Material Department. Initially, we note that the Organization's requested remedy substantially exceeds the parameters of the Claim as handled on the property. However, for the reason discussed above, the Organization has not shown that the work accruing to the new positions was purchasing work either previously performed by Rock Island workers or within the scope of the January 1, 1974 Agreement. Specifically, the Organization has not proved that the purchasing activities were necessary to the operation of commuter service on the Chicago to Joliet line.

Therefore, we must deny this Claim due to lack of proof. This Board emphasizes that its decision is restricted to the record before us. Nothing in our Opinion should be construed to nullify the January 1, 1974 Working Agreement.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record 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

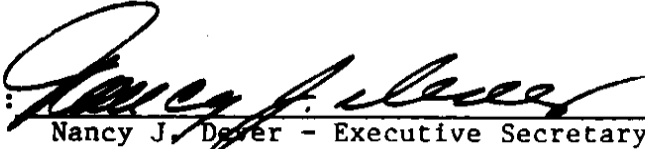
That the Agreement was not violated.

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 11th day of June 1986.