

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 12890
Docket No. 12854
95-2-93-2-228

The Second Division consisted of the regular members and in addition Referee Charlotte Gold when award was rendered.

(Brotherhood Railway Carmen -
(Division of TCU
PARTIES TO DISPUTE: (
(Norfolk and Western Railway Company

STATEMENT OF CLAIM:

- "1. That the Norfolk and Western Railway Company violated Rules 14 and 121; also, past practice for over thirty (30) years on the territory that was called the Wabash Railway Company.
2. On Bulletin #47 dated 12-28-92, the Norfolk and Western Railway Company abolished all the Write-up positions effective 1-4-93.

That because of such violation, the Norfolk and Western Railway Company be ordered to place Carman L.W. Lee, L.B. Barbour, P.G. Smothers and B.R. Edds back to the positions that were abolished effective 1-4-93."

FINDINGS:

The second Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

By Bulletin #47, dated December 28, 1992, Carrier abolished four Bill Writer or Write-up positions in the Mechanical Department in Detroit, which provided for a 6 cent per hour differential in pay. At the same time, Carrier posted bids for four Carmen positions. The Organization maintained that this act violated a consistent and long-standing practice of approximately thirty years to pay the differential for Bill Writer work, as well as Rules 14 and 121 of the parties' Agreement. It contended that Carrier was now forcing write-up work on all Carmen working on the Repair Track.

Despite Carrier's assertion that there was not a valid past practice or that a differential may have been paid previously "erroneously...outside the provisions of the applicable Agreement," the Organization has submitted sufficient probative evidence to support its claim that a differential had been paid for this work. Carrier is correct in its claim that the Organization has failed to prove a violation of either Rule 14 (dealing with the bulletining of positions) or Rule 121 (Classification of Carmen). But by their actions over an extensive period of time, the parties have augmented the written terms of their Contract with a mode of payment acceptable to both. The fact that the Organization has failed to show that write-up or bill writing work accrues exclusively to Carmen, as Carrier insists it must do, is not germane, since the work has not been transferred outside the craft.

The question arises, however, as to whether this practice is binding on the parties or whether it is to be treated as a custom that developed over the years out of operational factors then in existence, one which is subject to alteration as a result of a major change in Management's underlying mode of operation. In this instance, Carrier has made a convincing case that the change that occurred here came about as the result of its exercising a legitimate managerial function involving the efficient and effective reorganization of its work processes.

In 1987, Carrier introduced a Computer Aided Reporting System (CARS) Program, which allowed for the use of a computer device (Keyboard Display Terminal or KATY) that could be transported by individual Carmen. The device streamlined the recording of certain data and eliminated the need for its further input into the Company's record system. Carrier argues that as a result of this new technology, the old Bill Writer's position and function had disappeared.

Based upon a complete review of the record, this Board finds no basis for disputing Carrier's conclusion or its actions thereafter.

Form 1
Page 3

Award No. 12890
Docket No. 12854
95-2-93-2-228

AWARD

Claim denied.

O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 5th day of June 1995.