

**Award No. 13976**

**Docket No. CL-14563**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**(Supplemental)**

**P. M. Williams, Referee**

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**PARTIES TO DISPUTE:**

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,  
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**

**MONON RAILROAD**

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood (GL-5469) that:

1. The Carrier violated the Clerks' Agreement when on August 3, 1962 the position of Day Chief Clerk, rated of \$20.66 per day, was abolished and in lieu thereof a new position was established as Inside Yard Clerk, rate of \$19.73 per day, Saturday and Sunday rest days, to perform exactly the same duties formerly performed by the Occupant of the abolished Day Chief Clerk position.
2. The Carrier violated the Clerks' Agreement when on August 3, 1962 the relief position that relieves the Day Chief Clerk on each Saturday and Sunday was abolished and in lieu thereof a new position was established at rate \$19.73 per day to perform exactly the same duties formerly performed at rate of \$20.66 per day.
3. Mr. Andrew W. Berthold be reimbursed for the difference between \$19.73 and \$20.66 per day, starting with August 6, 1962, and continuing until the violation is corrected.
4. Mr. Milan E. Scherer be reimbursed for the difference between \$19.73 and \$20.66 per day, starting with August 4, 1962, and continuing until the violation is corrected.

**EMPLOYEES' STATEMENT OF FACTS:** On July 27, 1962, Carrier issued Bulletin No. 124 (Employees' Exhibit "A") abolishing the position of Day Chief Clerk (rate of \$20.66 per day) effective with termination of assignment on August 3, 1962—prior to this on July 22, 1962, Carrier issued Bulletin No. 129 (Employees' Exhibit "B") abolishing the relief position (Rate of \$20.66 per day—Saturdays and Sundays) effective with termination of assignment on August 3, 1962.

On July 27, 1962 Carrier issued Bulletins No. 134 and No. 137 (Employees' Exhibits "C" and "D") establishing a position of Inside Yard Clerk (rate of \$19.73 per day) and Relief Clerk No. 2 to relieve the Inside Yard Clerk on Saturdays and Sundays (rate of \$19.73 per day) to be effective August 4, 1962. Mr. Berthold was the occupant of the Day Chief Clerk position and upon

5. Awards of the Third Division uphold Carrier's Position.

The above claims should, therefore, be denied in their entirety and Carrier so requests.

**OPINION OF BOARD:** Effective August 3, 1962, Carrier abolished the Day Chief Clerk, (rate of \$20.66 per day) and the relief position therefor, at the South Hammond Yard Office. Effective the following day a position of Inside Yard Clerk (rate of \$19.73 per day) was established.

It is the Employees' contention that "the Carrier abolished a position and established a new one (on paper and in name only) with the same duties and responsibilities as the position abolished, and reduced the rate of pay of the employee," thereby violating Rule 72 of the agreement.

The record contains evidence to the effect that the Day Chief Clerk's job description included the duty and responsibility to "Supervise Yard Office clerical force," whereas the duty and responsibility mentioned was not a part of the Inside Yard Clerk's duties.

We are of the opinion that Carrier's act did not violate the spirit or intent of Rule 72, therefore, we must deny the claim.

**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.

**AWARD**

Claim denied.

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
By Order of Third Division

**ATTEST:** S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of November, 1965.

**LABOR MEMBER'S DISSENT TO AWARD 13976, DOCKET CL-14563**

Rule 72 reading:

"Established positions shall not be discontinued and new ones created under the same or different titles covering relatively the same kind or grade of work for the purpose of reducing the rate of pay or

evading the application of these rules.”

constituted a strict prohibition against what the Carrier did in this case.

This erroneous Award has permitted Carrier to do what the above cited rule prohibits. To sustain the Carrier in these sham abolishments and determine, on the basis of paper “job descriptions” as opposed to the fact that Claimants performed the same duties on their “new” positions as they previously performed on the “abolished” positions, merely adds insult to the injury committed when Carrier nominally abolished the former positions and caused Claimants to perform relatively the same work at a reduced rate of pay.

In accord with numerous prior Awards such as 1773, 5931, 6832, 6870, 6878, 7383, 10129 and 11559, all of which were handed the Referee, the claim should have been sustained.

I therefore dissent.

LABOR MEMBERS  
D. E. Watkins