Award No. 18482
Docket No. CL-18761

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Gene T. Ritter, Referee

PARTIES TO DISPUTE:

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

PENN CENTRAL TRANSPORTATION COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6762) that:

(a) Carrier violated the Clerks' Agreement between the parties effective September 15, 1957, as amended, when it transferred the duties and responsibility of the Accountant position to the Assistant Accountant position.

(b) Carrier shall now be required to compensate F. Suozzo, Assistant Accountant at Harlem River, New York the difference between the Assistant Accountant rate of pay $27.9642 per day, and the rate of Accountant $29.6140 per day, in the amount of $1.65 per day, commencing April 7, 1969 and each date thereafter.

EMPLOYES' STATEMENT OF FACTS: There is an Agreement bearing an effective date September 15, 1957, including amendments and revisions, between the former New York, New Haven and Hartford Railroad Company and the Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes.

January 19, 1967, a Merger Protective Agreement for New Haven Railroad Employes was negotiated between the parties.

January 1, 1970, the Interstate Commerce Commission in its Order in Finance Docket 21989 decided November 25, 1968 the inclusion of the New York, New Haven and Hartford Railroad Company in the Penn Central System as of January 1, 1970, approved and directed, and in accordance with the Merger Agreement, paragraph D, reading:

"(d) The Merged Company will take over and assume all contracts, schedules and agreements between Pennsylvania, Central, and the labor organizations signatory hereto concerning rates of pay, rules, working conditions and fringe benefits in effect at the time of consummation of the said merger and will be bound by the terms and provisions thereof, subject to changes in accordance with

By letter dated June 20, 1969, Division Chairman Hughes appealed the claim to Division Superintendent J. F. Spreng at New Haven. Copy of this letter, and the attachment thereto, is attached as Carrier's Exhibit D and D-1.

Prior to the inclusion of the New York, New Haven and Hartford Railroad into the Penn Central merger, effective January 1, 1969, the avenue of appeals for the handling of claims or grievances on the New Haven for claims which arose at large agencies was as follows:

1st level – Agent
2nd level – Division Superintendent
Final level – Director, Labor Relations and Personnel

Following the inclusion of the New Haven into the Penn Central merger, the New Haven Railroad became the New Haven Region of the Penn Central. The former title of Director, Labor Relations and Personnel held by Mr. J. J. Duffy on the New Haven was abolished and a new Regional office of Superintendent Labor Relations and Personnel for the New Haven Region was established, reporting to the Director, Labor Relations at Philadelphia.

By letter dated July 1, 1969, General Chairman Adinolfi was advised that "* * * effective immediately all appeals (except discipline cases) on behalf of employes represented by your organization formerly directed to the Division Superintendent at New Haven should be hereafter addressed to the undersigned for handling."

Accordingly, the appeal to Division Superintendent Spreng was referred to the Superintendent Labor Relations and Personnel for handling. Decision was rendered by the Superintendent Labor Relations and Personnel, dated September 18, 1969, denying the claim. Copy of that decision is attached as Carrier's Exhibit E.

Agreement effective September 15, 1957 between the Brotherhood of Railway Clerks and the New York, New Haven and Hartford Railroad is on file with this Board, and is by reference made a part hereof.

(Exhibits not reproduced.)

OPINION OF BOARD: On January 19, 1967, a Merger Protective Agreement was negotiated between the parties for New Haven Railroad Employes. On January 1, 1970, the Interstate Commerce Commission issued its order in Finance Docket 21989, which included the New York, New Haven and Hartford Railroad Company in the Penn Central System as of that date. Prior to April 7, 1969, there were in existence at Harlem River Freight Terminal Office the positions of Accountant and Assistant Accountant. On February 8, 1969 Carrier issued notice that the "accounting and freight bill work of the Harlem River Freight Station would be transferred to the Central Billing and Collection Agency at New Haven, effective on or about April 1, 1969." On March 20, 1969, in Bulletin No. 1210, Carrier abolished the accountant and assistant accountant's positions at Harlem River as of March 31, 1969. On March 28, 1969, the Carrier rescinded the order of Abolishment of Accountant position held by Vincent Colongelo at the Harlem River Freight Office, and, on the same date, in Bulletin 1217, abolished the Accountant position on account of transfer of work to Central Billing and Collection Agency, New Haven, Connecticut. From April 7, 1969, Claimant,

Assistant Accountant, continued to perform accounting duties at Harlem River. The Organization contends that Claimant has assumed the Accountant's duties and is entitled to receive the higher rate of pay of Accountant. Carrier contends that Claimant does not perform all of the duties of the former higher rated position of Accountant and is, therefore, not entitled to the higher rate requested in this Claim.

The record reflects that the accounting and freight bill work was transferred to the Central Billing and Collection Agency, and that the only Accountant's duty taken over by the Claimant was the making up of storage bills on export freight and second delivery bills on lighterage shipments. Therefore, it must be concluded that the Accountant's duties were not assigned to, identified with, and assumed by the Claimant in this instance as required by Award 16938 (Mesigh) in order to command the higher rate of Accountant's pay. There must be a substantial fulfillment of the position or work in order for Claimant to collect the higher rate of pay. See Awards 16828 by this referee; 15629 (McGovern); 16152 (Ives) and others to the same effect. The proof in the instant dispute falls far short of the necessary showing of substantial fulfillment of the position or work of Accountant. Therefore, this Claim will be denied.

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.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 31st day of March 1971.

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