

NATIONAL **RAILROAD** ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19913
Docket Number CL-20019

Frederick R. Blackwell, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees

PARTIES TO DISPUTE: (

(The Western Pacific Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-7181)
that:

1. Carrier violated the rules of the Agreement when it unilaterally abolished Train Desk - Diesel Clerk Position No. 812 at Keddle, California and assigned the duties to Steno-Clerk, Division Engineer, Position No. 884.

2. Clerk T. F. Nally be allowed eight hours compensation for each day that Position 812 was abolished until re-established.

OPINION OF BOARD: Claimant occupied the position of Train Desk-Diesel Clerk, 7 a.m. to 3 p.m., at Keddle, California, when it was abolished on June 17, 1971. The duties of the position were assigned to the **Steno-**Clerk position at Keddle on July 1, 1971. Though senior to the incumbent of the Steno-Clerk position, the claimant displaced to the position of Train **Desk-**Diesel Clerk, 3 p.m. to 11 p.m. Carrier asserts, without contradiction of record, that claimant's reason for not displacing to the Steno-Clerk position was that he was not qualified for the position.

Petitioner contends that the assignment of the Train Desk-Diesel Clerk duties to the Steno-Clerk position so changed the latter position that it became a new position under Rule 5 and should have been bulletined as such. Petitioner specifically contends that, had the Steno-Clerk position **been** bulletined, claimant would have bid it in and, thus, Carrier's action has deprived claimant of the privilege of exercising his seniority rights to the position of his choice.

Rule 5 reads as follows:

RULE 5 - Title of Positions

Proper designation and classification of the duties and work assigned each position are necessary and shall be adhered to. The General Chairman shall be notified in writing of any substantial change in assigned duties.

Carrier denies that the Steno-Clerk position was changed and contends that Rule 5 is inapplicable because the work assigned to the Steno-Clerk position was "not unlike assignment of such work to other positions, for example, the work assigned to the Trainmaster's Clerk, **Portola.**"

Thus, we have a fact issue regarding the nature of the change in the assigned duties of the Steno-Clerk position by the addition thereto of the train desk duties. The only evidence of record bearing upon this issue is a three (3) page catalogue of train desk duties actually performed by the Steno-Clerk on July 8, 1971. Claimant compiled the catalogue, evidently from direct observations. The catalogue is quite detailed and describes duties performed in blocks of time as little as five minutes. However, analysis of the duties listed in the catalogue, mainly answering the phone, does not suggest that such duties are different from duties normally assigned to a Steno-Clerk. There being no other evidence to examine, we must **conclude, on** the record before us, that the evidence is insufficient to establish that the Steno-Clerk position was so changed by the assignment thereto of train desk duties that it became a new position and should have been bulletined as such.

We also observe that the Steno-Clerk position, which Petitioner contends should have been bulletined so that claimant could have bid it in, is the very position which claimant's seniority entitled him to take by displacement upon the abolishment of the train desk position. He did not displace, however, because he was not qualified for the Steno-Clerk position and, for the same reason; he could have been disqualified from the position had it been bulletined as a new position. Thus, under any view of the obtaining facts, **we believe** it would be difficult to find a violation of the rights of this particular claimant.

In view of the foregoing we shall dismiss 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 Claim is dismissed.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulson
Executive Secretary

Dated at Chicago, Illinois, this 7th day of September 1973.

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that:

1. Carrier violated the rules of the Agreement when it unilaterally abolished Train Desk - Diesel Clerk Position No. 812 at Keddie, California and assigned the duties to Steno-Clerk, Division Engineer, Position No. **884.**

2. Clerk T. F. Nally be allowed eight hours compensation for each day that Position 812 was abolished until re-established.

OPINION OF BOARD: Claimant occupied the position of Train Desk-Diesel Clerk, **7 a.m.** to 3 p.m., at Keddie, California, when it was **abolished** on June 17, 1971. The duties of the position were assigned to the **Steno-Clerk** position at Keddie on July 1, 1971. Though senior to the incumbent of the Steno-Clerk position, the claimant displaced to the position of Train **Desk-Diesel Clerk**, 3 p.m. to 11 p.m. Carrier asserts, without contradiction of record, that claimant's reason for not displacing to the Steno-Clerk position was that he was not qualified for the position.

Petitioner contends that the assignment of the Train Desk-Diesel Clerk duties to the Steno-Clerk position so changed the latter position that it became a new position under Rule 5 and should have been bulletined as such. Petitioner specifically contends that, had the Steno-Clerk position been bulletined, claimant would have bid it in and, thus, Carrier's action has deprived claimant of the privilege of exercising his seniority rights to the position of his choice.

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We also observe that the Steno-Clerk position, which Petitioner contends should have been bulletined so that claimant could **have** bid it in, is the very position which claimant's seniority entitled him to take by **displacement** upon the abolishment of the train desk position. He did not displace, however, because he was not qualified for the Steno-Clerk position and, for the same reason; he could have been disqualified from the position had **it been** bulletined as a new position. Thus, under any view of the obtaining facts, we **believe** it would be difficult to find a violation of the rights of this particular claimant.

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That the Claim is dismissed.

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Claim dismissed.

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

ATTEST :


Executive Secretary

Dated at Chicago, Illinois, this 7th day of **September** 1973.