

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20339
Docket Number TE-20332

Irwin M. Lieberman, Referee

(Brotherhood of Railway, Airline and Steamship
(Clerks, Freight Handlers, Express and
(Station **Employees**
((formerly Transportation-Coicaction Division, **BRAC**)
PARTIES TO DISPUTE: (
(Soo Line Railroad Company

STATEMENT OF CLAIM: Claim of the General **Committee** of the Transportation-Communication Division, **BRAC**, on the Soo Line Railroad, **TC-5873**, **that:**

1. Carrier violated **Rules** 1, 2, 7, 8 and 30 of the Agreement between the parties when on August 28, 1972 it **removed** the **Official** Agency at Ashland, Wisconsin from **Rule** 7 and consolidated it with the First Trick Operator position covering the consolidated position by **Rule** 30 of the Agreement, without agreement with the representatives of the employees, as provided in **Rule** 8 of the **Agreement**.

2. Carrier shall now compensate the incumbent of the consolidated positions at Ashland, Wisconsin, Mr. A. A. Utegaard or his successors, **commencing** on August 28, 1972, the highest rate of pay of the two (2) positions consolidated, plus **11.5¢** per hour for as long as the two (2) positions remain consolidated instead of \$4.5913 per hour, the rate arbitrarily set by the Carrier. The highest rate being that of the Official position.

OPINION OF BOARD: **The** dispute herein involves the discontinuance of the Official Agent's position at Ashland, Wisconsin and the subsequent reclassification of the first trick Operator's position to **Agent-Operator**.

Part 1 of the claim deals with the alleged "consolidation" of the Official Agent's position with the First Trick Operator's position without agreement of the Organization. It is evident that the Official Agent's position is a supervisory classification outside the purview of the Railway Labor Act and also not within the scope of the Agreement. The Carrier correctly stated that it has the unilateral right to establish or abolish such positions as well as to determine rates of pay and working conditions for such positions without the participation of the Organization. Although many **Organizations** in this industry provide for promotion to supervisory positions from seniority rosters, as in **Rule** 7 (e) herein, such understandings do not place **exempt** supervisory positions under the Agreement. In any event the Board has no authority to consider issues with respect to Official positions.

Part 2 of the claim deals with the rate of pay for the position of Agent-Operator established at Ashland. It is well known and accepted that this Board has no jurisdiction **over** negotiable issues; in particular the Board has no authority to establish a rate of pay. The **establishment** of rates of pay must be determined through negotiation and if required through mediation procedures contained in Section 6 of the Railway Labor Act, as amended.

Based on the reasoning **above**, we are compelled to dismiss the claim without consideration of the issues raised or the merits of the dispute.

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 the Board does not have jurisdiction **over** this dispute.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A.W. Paulsen
Executive Secretary

Dated at **Chicago, Illinois**, this 31st day of July, 1974.