

NATIONAL RAILROAD' **ADJUSTMENT** BOARD

THIRD DIVISION

Award Number 21127
Docket **Number** CL-21148

Joseph A. Sickles, Referee

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

PARTIES TO DISPUTE: (

(Butte, **Anaconda &** Pacific Railway Company

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood (GL-7882) that:

1. Carrier violated the Clerks' rules agreement at Anaconda, **Mon-tana, when**, on May 15, 1974, it established a continuing position titled "**Jun-ior Warehouseman**", paying as of that date, \$37.80 per day **in** the **Store** Depart-ment.

2. Carrier **shall now** be required to restore the title of "**Warehouse-man**" to the position in the Store Department at Anaconda and assign this posi-tion the **commensurate** rate which, on date of claim, was \$41.08, and this amount shall be adjusted to reflect subsequent general wage increases.

3. Carrier shall now be required to pay **Robert Maehl**, his substitutes and successors, \$3.28 for each day the Junior **Warehouseman** position was and is assigned to work, **commencing** May 23, 1974; said amount to be adjusted to reflect all subsequent wage increases.

OPINION OF BOARD: In May of 1974, Carrier awarded the position of Junior **Warehouseman**. The **Employees** protested the action, asserting that the position should have been bulletined as a Warehouse-. They contend that the bulletin in question contained the same major assigned duties as a Warehouseman - rather than those formerly assigned **to** the Junior Warehouseman,. which is contrary to **Rule 39**:

"RULE 39. ADJUSTMENT OF BATES

When there is a sufficient increase **or** decrease in the duties and responsibilities of a position or change in the character of the service **required**, the **compensation** for such position will be subject to adjustment by **mutual** agree-ment with the duly accredited representative, but established positions till not be discontinued and new ones created under the **same** or different titles **covering relatively** the same class or grade or. work, except by negotiation."

Both parties have stressed that the opposing party has submitted docu-ments which were not considered **while** the dispute was under consideration on the property. **Consistent** with the long-established procedures of this Board, we have disregarded all such items and confined our consideration solely to those matters which are properly before us.

The **Employees** have the burden of proving the claim. Obviously, the Agreement would preclude a unilateral reduction of **compensation** for a given position, but we are unable to find a specific showing of facts, on the property, to warrant a conclusion that Carrier violated the Agreement. We have noted that a Junior **Warehouseman** assists a Warehouse Foreman - not a **Warehouseman**, and we **have** also noted that contrary to the **Employees'** suggestion, the position of Junior **Warehouseman** has been occupied, in the past, when the **Warehouseman** position **was** vacant.

In Award 18082, relied upon by Claimants, there **was** a finding that an established position **was** discontinued, and a new position created which covered "relatively the same . . . work..." This record does not present sufficient factual evidence for **formulation** of such a conclusion.

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 be dismissed.

A W A R D

Claim dismissed.

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

ATTEST:;


Executive Secretary

Dated at Chicago, Illinois, this 16th day of July 1976.