

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award Number 21930
Docket Number CL-21678

James **F. Searce**, Referee

PARTIES TO DISPUTE: ((Brotherhood of Railway, Airline and
(**Steamship** Clerks. Freight Handlers.,
(Express and Station **Employees**
(
(Tram-Continental Freight Bureau
(Weighing and Inspection Department
(South Pacific Coast Territory

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood,
GL-8132, that:

(a) Bureau violated the rules of the current Clerks' Agreement at Los Angeles commencing May 28, 1974, and continuing each work day thereafter when the Bureau failed to declare position No. 155 vacant and readvertised, notifying Mr. **Octavio** Culebro of the change in the territory and the elimination of the automobile mileage, and

(b) The Bureau shall now compensate Mr. **Octavio** Culebro eight hours per day at the rate of \$42.4536 in addition to any other **compensation** that he may have received on these dates as a result of this violation of Agreement rules.

OPINION OF BOARD: The resolution of this dispute turns upon the application of the following rules:

RULE 4 - ADVERTISING AND ASSIGNING POSITIONS

(a) New positions or vacancies of fifteen (15) work days or more duration will be promptly advertised in places accessible to **employees** affected for a period of ten (10) calendar days. Bulletins shall be numbered consecutively and will show headquarters, title, position number, duties of position, assigned hours of service, assigned meal period, assigned rest days, **whether new** position, **permanent** or temporary vacancy, rate of pay, and if mileage **allowance** is granted and assigned territory.

NOTE: The word "headquarters" in Rule 4 (a) above shall be interpreted as providing that the bulletin shall show the specific location, i.e., in Los Angeles the bulletins will show Santa Fe Station Los Angeles or Southern Pacific Station Los Angeles as the case may be and not the City of Los Angeles.

(b) When the duties of a position are substantially changed, the position shall be declared vacant and advertised, upon written request from the Brotherhood, and the occupant shall be permitted to exercise his seniority under the provisions of Rule 2 (c) and Rule 6.

RULE 10 - STARTING TIME

(a) Regular assignments shall have a fixed starting time, which shall be the same each day, and the regular starting time shall not be changed without at least thirty-six (36) consecutive hours notice to the **employees** affected.

(b) When the assigned starting time of a regular position is changed as much as two (2) hours in one change, or changed two (2) hours in the aggregate since last bulletined, or when either or both rest days assigned thereto are changed, such position shall be declared vacant and filled in the manner provided in Rule 4. The employe affected may, within ten (10) working days from date of change, (or if then absent from duty, within ten (10) working days after again reporting for duty) upon proper written notice, exercise seniority rights to any position held by a junior employe; the latter to have displacement rights in accordance with the rules of this Agreement.

(c) When the assigned starting time or the assigned quitting time of a regular position is changed less than two (2) hours, the affected employe may, within six (6) working days thereafter, (or if then absent from duty, within six (6) working days after again reporting for duty), upon proper written notice, exercise seniority rights to any position held by a junior employe; the latter to have displacement rights in accordance with the rules of this Agreement.

(d) **An** employe exercising seniority rights to another position under the provisions of Rule 10 (b) or 10 (c) will be promptly released from his former position. If for any reason the employe is not released by Management he shall be paid beginning with the eleventh (11th) work day after the change, and for each work day

thereafter, the rate of the new position or the rate of the position upon which held, whichever is the higher, and in addition two dollars (\$2.00) per work day until released. If an employee is required to remain on and protect a position under the provisions of Rule 10 (c) and is thereby required to work on the sixth and/or seventh day in the seven-day period commencing with the first day of his former work week prior to being released therefrom or assigned thereto by bulletin, he shall be paid at the rate of time and one-half for such service.

(e) If the assigned territory, location or headquarters are changed or if the mileage allowance is discontinued or added to a position, the position will be declared vacant and filled in the manner provided in Rule 4. The employee affected may, within ten (10) working days from date of change, (or if then absent from duty, within ten (10) working days after again reporting for duty) upon proper written notice, exercise seniority rights to any position held by a junior employee; the latter to have displacement rights in accordance with the rules of this Agreement.

Prior to May 15, 1974, Claimant **Octavio** Culebro was the occupant of Inspector Position No. 47. Effective that date the Bureau eliminated the automobile allowance to that position and, in accordance with Rules 4(b) and **10(e)**, Claimant opted to vacate Position No. 47 and exercised displacement rights over junior employee **J. W. McGlynn**, titleholder to Inspector Position No. 155. Claimant was assigned to Position No. 155 on May 28, 1974. Effective that date the Bureau made a reassignment of duties between the two positions. The Organization contends the changes made the duties of Position No. 155 almost identical to those of Position No. 47 and, in effect, nullified Claimant's exercise of seniority rights and forced him back onto Position No, 47, albeit now designated No. 155.

Arguing that the changes in the duties assigned to Position No. 155 were substantial, the Organization protested and requested that the position be declared vacant and advertised and that the occupant (Claimant Culebro) be permitted to again exercise his seniority. The Organization alleges that the Bureau's refusal to do so violated Rule **4(b)**.

Our examination of the entire record finds that the changes in the duties of Inspector Position No. 155 on May 28, 1974, were "substantial" and, thus, when the Brotherhood requested the position be declared vacant and advertised, Claimant should have been permitted to exercise his seniority to another position. We will sustain Part (a) of the claim.

Part (b) of the claim seeks an additional eight hours per day at the rate of \$42.4536 for Claimant in addition to any other compensation that he may have received because he was not relieved from Position No. 155. Rule 10(d) of the parties' agreement provides, in part, that "if for any reason the **employee** is not released by Management he shall be paid beginning with the eleventh (11th) work day after the change, and for each work day thereafter, the rate of the new position or the rate of the position upon which held, whichever is the higher, and in addition two dollars (\$2.00) per work day until released" (underscoring added). This penalty provision **which** the parties saw fit to incorporate into their agreement is appropriate to the instant case. The rates of all inspector positions in the area are identical, therefore, we will award Claimant \$2.00 per day **commencing** with the eleventh day after May 28, 1974, to and including October 31, 1974, when further change occurred and Claimant was permitted to exercise seniority under Rules 4(b) and 10(e).

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;

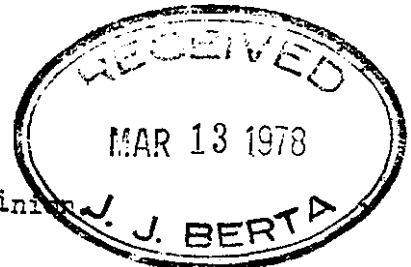
That the Carrier and the **Employees** involved in this dispute are respectively Carrier and **Employees** within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

The Agreement was violated.

A W A R D

Claim sustained as set forth in the Opinion.



NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 28th day of February 1978.