

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22127

Docket Number MS-21984

Herbert L. Marx, Jr., Referee

PARTIES TO DISPUTE: (Dwayne A. Ehresman, N. T. Weber,
(Spencer A. Peterson
(Union Pacific Railroad Company
((Eastern District)

STATEMENT OF CLAIM: This is to serve notice, as required by the rules of the National Railroad Adjustment Board, of our intention to file an **ex parte submission** on December 15, 1976 covering an unadjusted dispute between us and the Union Pacific Railroad involving the question;

Our claim of violation by the Union Pacific Railroad of Section 3 Article VIII of the Mediation Agreement dated Feb 25, 1971 which states in part, quote, "Such **new** positions shall be assigned on **the** basis of seniority, fitness and ability, (**fitness** and ability being sufficient seniority **shall** prevail) to the employees affected by the combining of said work and/or functions and on the basis of their **combined** roster seniority." unquote. Also our claim of violation of a doctrine established by history, tradition, custom, **and** past practice that **an** employee **is** not assigned to a position until they have physically **taken** over the duties of the assignment. Awards by the Third Division supporting this doctrine are 13810 2209 2389 and 13459.

OPINION OF BOARD: In accordance with the **provisions** of Article VIII of Mediation Agreement. Case No. A-8853, dated February 25, 1971, **the** Carrier **and the Brotherhood** through **negotiated** implementing agreements consolidated the Clerk and Telegrapher Rules **Agreements** and seniority rosters **on** this property effective June 1, 1975.

Subsequently, **on** or about **August** 1, 1975, Carrier effected the consolidation of certain clerk and telegrapher positions in accordance with the provisions of the aforementioned implementing Agreement. Claimants were affected by this **consolidation of** positions, **and** the claim as outlined in **the** Statement of Claim of this docket ensued.

In this case, petitioners argue that the May 22, 1975 implementing Agreement as negotiated on the property is in contravention of *their* interpretation of certain provisions of the February 25, 1971 National Agreement.

From examination of the Agreements involved in this case, the Board does not view the implementing Agreement as being in contravention of Article VIII of the February 25, 1971 National Agreement. However, even if it were in contravention of the National Agreement, it is still the duly negotiated Agreement which controls the application of the existing rules on the property.

Review of the facts as they apply to the controlling Agreement lead to the conclusion that the Agreement was properly applied in this instance.

Denial of the claim is, therefore, inevitable.

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 hereina; and

That the Agreement was not violated..

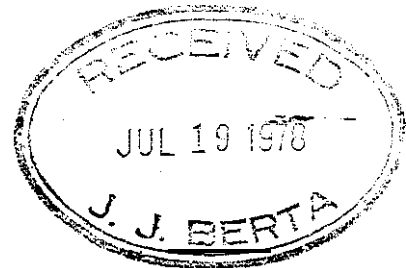
A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A.W. Pauls
Executive Secretary



Dated at Chicago, Illinois, this 30th day Of June 1978.