

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number **22321**
Docket Number CL-21901

Herbert L. Marx, Jr., Referee

(Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station **Employees**
PARTIES TO DISPUTE: (
(Kentucky & Indiana Terminal Railroad Company

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood,
(**GL-8290**), that:

1. Carrier violated the Agreement when effective Monday, **June 9, 1975** it assigned the **newly** created position of Rate Clerk with daily rate of \$43.30 to James **K. Canter**, and required him to perform the duties of the abolished position of **Rate Analyst** which had a daily rate of \$47.10.

2. Carrier shall, because of the violation cited above, compensate Claimant James **K. Canter** or his successor to this position \$3.80 per day beginning Monday, June 9, 1975, and continuing until this violation ceases.

OPINION OF BOARD: On June 2, 1975, Carrier issued a bulletin abolishing eleven positions, including that of Rate Analyst. Other positions abolished by the bulletin included jobs as Rate and Miscellaneous Clerk and Fate and Utility Clerk. **Simultaneously**, the Carrier advertised what it listed as "new positions" to replace most of the abolished positions. Among these were the position of Rate Clerk, subsequently filled by the Claimant.

This dispute is confined solely to the appropriateness of the pay rate of the position of Rate Clerk. It is the Organization's claim that the position of Rate Clerk (daily rate of \$43.30) requires the incumbent to "perform the duties of the abolished position of Rate Analyst" (daily rate of **\$47.10**), and that the Claimant should therefore receive the higher rate of pay.

The Organization argued on the property violation of Rules 54, 56, and 70. The rules cited by the Organization read as follows:

RULE 54 - ADJUSTMENT OF RATES

"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 agreement with the duly accredited representative.

Established positions will not be discontinued and new **ones** created under the same or different titles **covering** relatively the same class or grade of work, which will have the effect of reducing the rate of pay or evading the application of these rules."

RULE 56 - NEW POSITIONS

"The wages for **new** positions shall be in conformity with the wages for positions of similar kind or class in the seniority district where created. When there are no positions of similar kind or class where the new position or positions are created the rates of pay will be fixed by negotiation and agreement between the Director of **Labor** Relations and the General Chairman."

RULE 70 - ESTABLISHED PATES

"Rates of pay now in effect and established pursuant to agreements between the parties hereto shall continue in effect until changed as provided in existing wage agreements, by **mutual** agreement, or in accordance with the provisions of the Railway Labor Act, as amended."

The Organization makes a general characterization that the Carrier's action constituted only a complicated reshuffling of the work of all the involved positions. Aside from this, however, the Organization's claim in this particular dispute is basically deficient in attempting to show that the new position of Rate Clerk is the same as that of **Rate** Analyst. As shown in the "Preponderating Duties", the Rate Analyst involved functions to "supervise and instruct rate clerks". This specific and obviously meaningful duty is absent from the description of Rate Clerk, and the Organization made no showing

that the Rate Clerk performs this duty. **Thus, the** Board finds in this instance **no** violation of Rule 54. Although, as referred to in the second paragraph of the Rule, an established position was discontinued and a new **one** created **under** a different title, the Organization has failed to show that the new position covered "relatively the same class or grade of work." The supervisory function was **inherent** in the Rate Analyst position; rate work of the Rate Clerk has been part of the "grade of work" of several other rate positions which were **in** existence previously and which carried a **lower** pay rate than that of Rate Analyst.

This brings the Board to a consideration of Rule 56, which deals with two separate situations. Where, for a "**new** position," there are 'no positions of similar **kind** or class," rates of pay are fixed by negotiation and agreement between representatives of the **Carrier** and the Organization. But the **Board** finds that this is not the case in this dispute. Here, there are "positions of similar kind or **class**." The Carrier has made a **showing** that the position of Rate Clerk is "in conformity with the wages of positions of similar kind or class," such as Rate and Miscellaneous Clerk; **no** showing to the contrary was made by the Organization. Thus, the setting of the pay level for **Rate** Clerk did not violate Rule 56.

As to Rule 70, no showing was made of applicability of this rule.

While not raised on the property, argument before the Board dealt with a possible violation of Rule 18 **(f)**, which reads:

"When a position is abolished, the remaining work will be assigned to a position or positions with rates equal to or in excess of the rate of the position abolished."

Rule 18 **(f)** is not of help to the Organization **in** this instance. The supervisory part of the Rate Analyst position was transferred to an equal-rated position (Chief Clerk). It can be reasonably argued that the **nonsupervisory** portion of the Rate Analyst work was indeed abolished. The new Rate Clerk position **in** effect absorbs rate work of the abolished Rate and Miscellaneous Clerk, again without reduction in pay. This fact situation differs markedly **from** that covered in Award No. 18386 (**Rosenbloom**), cited before the Board, in **which** the Board found that the claimant therein "**performed** most of the significant duties . . . of the abolished higher paid job."

Aside from the merits of the dispute, the Carrier sought to prove procedural irregularities. The Board finds that these arguments are ill-founded, and the claim is in good order before the Board.

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;

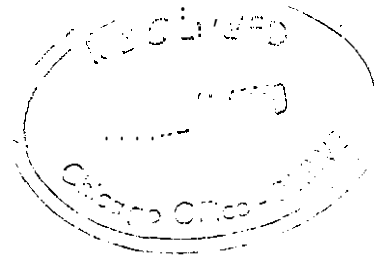
That the Carrier and the **Employees** involved in this dispute are respectively Carrier and **Employees** within the meaning of the Railway Labor Act, as approved June 21, 1934;

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

That the Agreement was not violated.

A W A R D

Claim denied.



NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: *A.W. Paulos*
Executive Secretary

Dated at Chicago, Illinois, this 28th day of February 1979.