

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22322

Docket Number CL-21908

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-8310), that:

1. Carrier violated the Agreement when effective June 9, 1975, it declared abolished the position of Chief Order Clerk with a daily rate of \$43.15, assigned the duties of the abolished position to the newly created position of Rate Clerk with a daily rate of \$43.30, but required Clerk Percy **Dean** who occupies the position of Route & Utility Clerk with a daily rate of \$41.04 to suspend work in his position **and** perform work of the higher rated position.

2. Carrier shall, because of the violation cited in (1) above **compensate** Clerk Percy Dean, or his successor(s) to the position of Rate & Utility Clerk, \$2.11 per day **commencing** June 10, 1975, and **continuing until** this violation ceases.

OPINION OF BOARD: **On** June 2, 1975, Carrier issued a bulletin abolishing eleven positions, including that of Chief Order Clerk (daily rate of \$43.15) and Fate and Utility Clerk (daily rate **of** \$43.15). Simultaneously, the Carrier advertised what it listed as "**new** positions" to replace most of the abolished positions. **Among** these were the positions of Rate Clerk (daily rate of \$43.30) and Route and Utility Clerk (daily rate of \$41.04). Prior to these **changes**, Claimant held the position of Fate **and** Utility Clerk; after the changes, he received the lower-rated **assignment** of Route **and** Utility Clerk.

The dispute centers **on** the function defined as "Accept car orders by phone," which is included in the Preponderating Duties of the higher-paid Rate Clerk. It is also agreed that this function was **performed** to some extent by the incumbent of the former position of Chief Order Clerk. The Organization argues that the Claimant is

entitled to the rate of pay of \$43.15, through the provisions of the following rules:

RULE 18(f)

"**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 52 -- RATING POSITIONS

"Positions (not employees) shall be rated and the transfer of rates from one position to another shall not be permitted."

RULE 53 -- PRESERVATION OF RATES

"Employees temporarily or **permanently** assigned to higher rated positions or work for a full day or less shall receive the higher rates for **the** entire day. Employees temporarily assigned to lower rated positions or work shall not have **their** rates reduced."

A 'temporary assignment' contemplates the fulfillment of the duties and responsibilities of the position during the time occupied whether the regular occupant of a position is absent or whether the temporary assignee does the work irrespective of the presence of the regular employee. Assisting a higher rated employee due to a temporary increase in **the** volume of work does not constitute a temporary assignment."

The Organization claims that the work of accepting car orders by phone was part of the position of the abolished Chief Order Clerk and **that** since the Claimant performs this task, he should receive at least the Chief Order Clerk's rate under the provisions of Rule 18(f). The record shows, however, that the new position of Rate Clerk absorbed this function, and the Rate Clerk carries a higher pay rate than **that** of Chief Order Clerk. Thus, Rule 18(f) is complied with, to the extent that accepting car orders by phone is at issue. The record shows that the new position of Route and Utility Clerk also performs this function, but the Carrier makes a **convincing** case to the Board that this function **has** been in **the** past

and continues to be included in numerous clerical positions.

For this reason, reliance on Rule 53, involving "temporary **assignment**" to "higher rated positions or work" is not warranted.

In this connection, the Board relies on Award No. 15629 (McGovern), which deals with an identical rule (Rule 59, involved in **that** dispute). The **Opinion** in Award No. 15629 reads in part:

"To receive the higher rate of pay under the above rule, Claimants must either be assigned to a higher rated position or given work which is higher rated. Clearly from the factual situation as presented, Claimants were not assigned to the higher rated position. The issue then presented is whether the preparation of interchange reports constitutes higher rated work coming within the meaning and intent of the above cited rule. There is no dispute that the preparation of such reports is done by the higher rated position. There is also no dispute that the higher rated position has numerous other duties and responsibilities, which far out-weigh the instant task both **in** scope and importance.

The Organization lays great stress on the words 'or work' in the rule, and urge upon us the thesis that because this work is done by the higher rated position, the-claim should be sustained. We invite attention to the second paragraph of the rule wherein it states 'A "temporary assignment" contemplates the fulfillment of the duties and responsibilities of the position during the time occupied . . . ' etc. Although factually, there is no claim **that** the Claimants occupied the position as such, the connotation one deduces **from** this language, even though it does not specifically refer to the 'or work' phrase of Paragraph 1, appears to contemplate within its **intendment** one assuming, if not all duties and responsibilities, at least a substantial portion of them. All positions contain demands for higher rated work and lower rated work. Can we say that the assignment of an isolated task, whether it be higher rated or lower rated, encompassing **2½** hours was within the

"contemplation of the Parties when Agreement was had on Rule 59? If the Claimants had been assigned to the position with its other duties and responsibilities, we would without hesitation sustain the claim. We do not necessarily conclude that one must assume all duties and responsibilities, or that one must assume all the work involved. We do conclude however that Rule 59 contemplates at least a substantial fulfillment of the position or work in order for a claimant to collect the higher rate of pay. To say that the performance of the work in question was such a substantial fulfillment, when it involved approximately 2½ hours on each occasion, is tantamount to an unreasonable construction of the rule itself. We do not believe that the Parties to the Agreement had such a factual situation in mind. We will deny the claim. "

This is further supported by Award No. 20478 (**Twomey**) which delineated the situations in which higher pay for temporary **assignment** is warranted. Award No. 20478 states in part:

"It is well settled that an **employee** assigned to a higher rated position need not fulfill all the duties of the higher rated position in order to qualify for the higher pay: see Awards 14681, 12088, 11981, 9842, 6965, 4669. It is equally well settled that there must be substantial fulfillment of the position or work in order for a Claimant to collect the higher rate of pay: see Awards 16828, 16536, 15629, 14490, 10912. The record is clear that the Rmloyes have **failed** to sustain their burden of proof that the Claimants substantially fulfilled the Crew Dispatcher's position requiring the higher rate of pay. Further, the **Employees** have failed to sustain their burden of proof that work in question was in fact higher rated work. The Claim will be denied,"

A finding in favor of the Organization is urged by reference to numerous other Awards, two of which deserve comment as examples. The Organization was **sustained in** Award No. 18386 (**Rosenbloom**), but in that dispute the Board found that the "Claimant has in fact performed most of the **significant** duties" (emphasis added) of the higher rated

position in question -- contrary to the facts in the present dispute. Likewise, in Award No. 20038 (Hays), the connotation of the Board's findings in favor of the Organization was that the claimant therein actually performed the essential clerical duties of a higher-rated position, although not necessarily all the duties.

There is, **in** sum, no finding that the single duty of accepting car orders by phone to be other than a part of the function of many clerical positions; it is appropriate **to** the new position of Route and Utility Clerk established by the Carrier.

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: 
Executive Secretary

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