

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22567

Docket Number CL-22503

Joseph A. Sickles, Referee

PARTIES TO DISPUTE:

{ **Brotherhood of Railway, Airline and
Steamship Clerks, Freight Handlers,
Express and Station Employees**
{ **The Baltimore and Ohio Railroad Company**

ST - OF CLAIM: Claim of the System **Committee** of the Brotherhood
(GL-8545) that:

(1) Carrier **violated** the **Clerk-Telegrapher** Agreement at Willard, Ohio, when effective Tuesday, February 17, 1976, it **required** Trace Clerk G. A. Shirey to perform higher-rated car distribution work, **previously performed by** incumbent of Chief Clerk position B-12, that location, without proper **compensation**, and

(2) Carrier **shall**, as a result, be required to **compensate** Claimant G. A. Shirey or **any** other occupant of Trace Clerk position 0109 at Willard, Ohio, the difference in rates of pay of Chief Clerk position B-12, (\$54.20 per day) and Trace Clerk position 0109, (\$49.20 Per day)(total of \$5.00 per day), plus subsequent general wage **increases**, commencing **February 17, 1976, and continuing for all subsequent dates** until the violation **ceases**,

OPINION OF BOARD: The **Claimant** asserts that Carrier assigned **certain "higher rated"** duties and responsibilities to his position **and although** he did not assume all of the **&ties** and responsibilities of that **higher** rated position, he nonetheless became entitled to **an increased rate**.

Claimant cites **Rules 16 and 17:**

"RULE 16

Preservation of Rates.

(8) **Employees temporarily** assigned to higher rated **positions**, shall receive the higher rates for four (4) **hours'** work or less, and if held on such position **in excess of four (4) hours**, a **minimum of eight (8) hours** at the higher rate. Employees **temporarily assigned to lower rated positions** shall not have **their rates** reduced.

"(b) A 'temporary assignment' contemplates the fulfillment of the duties and responsibilities of the position during the time occupied, whether the regular occupant of the 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."

"RULE 17

Change in Duties and New Positions.

When new positions are created, duties of existing positions materially changed or duties of existing positions changed from one class to another, compensation will be fixed in conformity with the same class and character of positions as are specified in the wage scale for the portion of the division on which located, and the rules will apply to employees filling such positions; provided the entering of employees in the positions occupied in the service or changing their classification or work shall not operate to establish a less favorable rate of pay or condition of employment than is herein established. New rates of pay to be effective from date first taken up by the representative of the employees.

(It is understood that when increases are granted under the terms of this paragraph to certain positions on account of increased duties, such increases will be eliminated when the increased duties for which the increase was granted are discontinued)."

While the Employees cite a number of Awards to us, those disputes dealt with 8 consideration of rules similar to Rule 16. But, that rule may not apply here because it refers to a situation where employees are "temporarily assigned"; which is not our case. Whatever might be the effect of Carrier's action under Rule 17 may not be assessed in this case because there has clearly been no factual presentation made to us to warrant a finding that said rule has been drawn into issue.

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 dismissed.

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

ATTEST: _____

A.W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 16th day of October 1979.
