

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22752
Docket Number CL-22805

George E. **Larney**, Referee

(Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express **and** Station **Employees**

PARTIES TO DISPUTE: (

(The Baltimore **and** Ohio Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-8708) **that:**

(1) Carrier violated the Clerk-Telegrapher Agreement at Willard, Ohio, when effective Thursday, May 13, 1976, it required Machine Clerks in Willard Terminal Service Center to perform higher rated work formerly performed by abolished Operator position C-141 and by Manager Wire Chief position C-56, without proper compensation, and

(2) Carrier shall, as a result, be requited to compensate H. L. Haupricht, Machine Clerk position C-383 - 4:00 PM to 12 **MN.**, **M. A. King**, Machine Clerk position C-384 - **11:59** PM to **7:59** AM, **J. M. Underwood**, Machine Clerk Relief position C-391 - various hours, and **R. E. Neidermeier**, Machine Clerk Relief position C-392 - Friday relief **11:59** PM to **7:59** AM, or their successors, the difference in rate of Manager Wire Chief position **C-56**, rate - \$53.89 per day, and Machine Clerk positions listed above, rate - \$51.51 per day, (a total of \$2.38 per day) plus general wage increases, commencing May 13, 1976, and continuing each subsequent date **until** the violation ceases.

OPINION OF BOARD: The Claimants involved in this case total four **(4)**, two of whom are classified as Machine Clerks, and two of whom are classified as **Machine** Clerks Relief and all are employed at Carrier's Terminal Services Center at Willard, Ohio. Petitioner alleges the Claimants were required to assume certain "higher rated duties" derived from the abolishment of Job C-141 and that such assumption of duties was in **violation** of Rules No. 16 and 17 of the Controlling Agreement, effective June 4, 1973. These Rules read as follows:

"Rule 16 - Preservation of Rates:

"(a) 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 ~~period~~ 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.)"

Petitioner also alleges a violation of Section 3 of Article VIII of the February 25, 1971 Mediation Agreement claiming no notice of abolishment of Job C-141 was given **to** the General Chairman. This Section of the Mediation Agreement reads as follows:

"(a) ~~On and after~~ the dates seniority rosters are ~~com-~~
~~bined~~ in accordance with the provisions of this Article,
the Carrier may combine work **and/or** functions performed
by clerks and telegraphers. When new positions are
created and/or when positions are abolished as a result
of the combining of such work and/or functions the
carrier shall give at least thirty (30) days' written
notice to the General **Chairman** involved. 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. If the
affected employees do not desire assignment to such
new positions, the new positions will be bulletined
to employees on the combined seniority roster. If
rosters have been combined under Section 1(a) or (b)
of this Article, the new positions will be designated
'c' or 'T' in accordance with the designation of the
initial employees assigned to such positions. In the
event an employee has no such designation, the designa-
tion will be determined by the Organization without
liability to the Carrier.

"(b) When new positions are created and/or positions
abolished as a result of the combining of such work
and/or functions the rate of pay of the new or surviving
positions will be no less than the highest rate of pay
of the positions involved."

Petitioner requests as a remedy that Claimants be compensated
a total of \$2.38 per day which represents the difference in the rate
of their job classifications and that of the rate of the Manager Wire
Chief's position to which the same duties of the abolished position
were also assigned. Petitioner requests that the payment of \$2.38
per day commence from date of May 13, 1976 through date violation
ceases.

Petitioner has cited **to us** several Awards in support of their contentions relative to **Rule 16**. **However**, the fact situation present in this case does not lend itself to **any** application of **Rule 16** which **only becomes** operative when an **employee** is "**temporarily** assigned to higher rated **positions**" which is not the case here.

As for **Rule 17** and Section 3 of Article VIII of the February 25, 1971 Mediation Agreement, we are unable to **find** any supportive probative evidence that Claimants' duties were **materially** changed or that the abolishment of job C-141 in any way **involved** the 1971 Mediation Agreement. In Award No. 21842 of this Division, we said:

"**Given the** paucity of probative evidence adduced by the organization in this case, we have **no** alternative but to **conclude** the record does not support the claim as presented. We **must**, therefore, deny the claim for failure of proof."

The same situation and conclusion is present here. This claim is denied for failure of proof.

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

Award ~~Number~~ 22752
Docket Number CL-22805

Page 5

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order *of* Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 29th day of February 1980.