NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 22831
THIRD DIVISION Docket Number CL-22726

Martin F. Scheinman, Referee

PARTIES TO DISPUTR: (Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes
(Norfolk and Western Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-8654) that:

1. Carrier violated the current Clerks' Agreement beginning on January 8, 1977 when it instructed the incumbents of the position of Eastbound Train Desk Clerk at Buffalo, N. Y., to perform work formerly assigned to the higher rated position of Car Expeditor and fafled to compensate those incumbents at the higher rate; and,

2. Carrier shall be required to compensate Mr. J. Murphy, or his successor, at the established rate of the position of Car Expeditor for January 8, 1977 and each work day thereafter, Tuesday through Saturday; and,

3. Carrier shall be required to compensate Mr. T. Koprevich, or his successor, at the established rate of the position of Car Expeditor for January 9, 1977 and January 10, 1977 and each Sunday and Monday thereafter.

OPINION OF BOARD: Bulletin No. 31, dated June 9, 1976, advertised the position of Car Expeditor at the Bison Yard in East Buffalo, New York. The assigned hours for the Car Expeditor Position were '8:00 a.m. to 4:00 p.m., Monday through Friday, with Saturday and Sunday rest days, at a daily rate of $59.57. The bulletin briefly described the duties of the Position to be:

> Handle all car inquiries for both CR and the N&W. Expedite handling of all General Motors and Ford traffic as required. Prepare daily Hot Sheet for submission to Terminal Trainmaster for all cars as required. Other clerical duties as assigned.

That position remained in existence for approximately fourteen months until it was abolished, effective September 14, 1977.

In addition to the Car Expeditor Position at Bison Yard, there existed Train Desk Clerk Position No. 9, with assigned hours of 7:59 a.m. to 3:59 p.m., Tuesday through Saturday, with Sunday and Monday rest days, at a daily rate of $51.00. Bulletin No. 781, dated July 1, 1976, briefly described the duties of the Train Desk Clerk Position:

> Pulling bills for movement of cars in Eastbound trains, get information from Tonnage Clerks at Harlem Ave. Sort bills in train order, figure tonnage on movement of trains, prepare short consist. Other duties incidental to position.

Claimants are the occupants of the Train Desk Clerk Position.

On January 8, 1977, Carrier issued instructions to the Train Desk Clerk. Part of the instructions stated:

> EASTBOUND (TRAIN DESK) 1st TRICK WILL RECEIVE A CALL FROM FORD MAHWAH. AT THIS POINT FORD WILL GIVE INITIALS & NUMBERS OF CARS THAT HAVE TO MAKE (SHUTDOWN CARS)
> SECURE MAHWAH FORM FROM HEAD WESTBOUND AND BRING UP TO DATE ALL INFORMATION REQUESTED (HUMP OR FLAT SWITCHLOCATION) AND MARKING THE CARS THAT ARE SHUTDOWN UNDER COMMENTS (SHUTDOWN) AFTER THIS IS COMPLETED PICTURES TO
> JJ REDDEN SUPT
> TTM
> YDMASTER HARLEM AVE // HUMP TOWER
> CAR DISTR
> RETURN FORM BACK TO HEAD WESTBOUND.

The Organization contends that the effect of these instructions was to transfer the work and duties of the Car Expeditor Position to that of Train Desk Clerk. In sum, the Organization claims that Carrier violated the Agreement between the parties when it instructed the incumbents of the position of Eastbound Train Desk Clerk at Buffalo, New York to perform the work formerly assigned to the Car Expeditor and failed to compensate those incumbents at the higher rate.

In its submission to this Board, the Organization alleges violation of the following work rules: Rule 1 (Scope), Rule 38 (Time Limits on Claims), Rule 47 (Established Rates and Positions), Rule 48 (Rating Positions), and Rule 49 (Reservation of Pates). Yet, it is evident, after a careful review of the record, that the only rule cited and relied on in the on-property

handling was Rule 49. It is well settled that issues and contentions not raised in the handling of this dispute on the property may not be raised for the first time before this Board. See for example Awards 17329, 20607, 21394, 21441. Therefore, we must disregard the Organization's reference to Rules 1, 38, 47 and 48.

Rule 49 states:

> (a) Employes temporarily assigned to higher rated positions, shall receive the higher rates for four hours' work or less, and if held on such position8 in excess of four hours, a minimum of eight hours at the higher rate. Employes 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 employe. Assisting a higher-rated employe due to a temporary increase in the volume of work does not constitute a temporary assignment.

In order to be eligible to receive a higher rate, a Claimant must show that he was temporarily assigned to a higher rated position. It is not essential for an employe to perform all the duties and responsibilities of a higher rated position to qualify for compensation at the higher rate. Neither must the employe assume all the work involved. See Awards 22760, 16461, 14681, 12088. However, we conclude that Rule 49 contemplates that there be substantial fulfillment of the position or work in order to receive a higher rate of pay. See Awards 22760, 20478, 16828, 16536, 15629.

That is, the burden lies with the Organization to show that the Eastbound Train Desk Clerks substantially fulfilled the Car Expeditor duties and the record is completely silent as to the amount of time spent doing the disputed duties,

In sum, we must conclude that the Organization has failed to prove the necessary elements of a Rule 49 violation. Since this is the only rule cited in the handling on the property, and, inasmuch as Claimants were not shown to have been temporarily assigned to a higher rated position, the claim fails for lack of proof of the rule violation alleged.

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 Employee involved in this dispute are respectively Carrier and Employee 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 30th day of April 1980.