

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23089
Docket Number CL-22572

William M. Edgett, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,
(Freight **Handlers**, **Express** and **Station Employees**
(**St. Louis-San Francisco** Railway **Company**

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood (GL8621)
that:

1. Carrier violated the **terms** of the effective agreement between the parties when on October **15**, 1976, it abolished the **round** house clerk position No. 60 at Ft. Smith, Arkansas, rate of pay effective January 1, 1977, \$51.27 per day; and, at the **time** of the **abolishment**, assigned the duties to a **janitor** messenger position No. 59 which has a rate of pay of \$45.20 per day.

2. Carrier shall **now** be required to compensate Mr. Doug Nicholson, or his successor as occupants of position **No.** 59, the difference between the rate of the janitor messenger position No. 59 (\$45.20 per day) and the rate of the round house clerk position No. 60 (\$51.27 perday) **beginning** December 31, 1976, **until** corrected.

OPINION OF BOARD: This is a **claim** for the difference in rates of Position No. 60, **round** house clerk, and Position No. 59, janitor-messenger, based upon the improper **abolishment** of Position No. 60 and the **assignment** of the remaining duties to Position No. 59 on October **15**, 1976.

The **Organization** contends Carrier violated **Rules** 56, **58**, 59 and 60 when it abolished Position No. 60 **and** required Claimant to assume a substantial portion of the work assigned to the abolished position, promising to adjust the rate but never following through with the adjustment.

Carrier contends that it implemented a program of repair and **maintenance** for all GP-7 and GP-38 locomotive unite, transferring the work to Springfield, which resulted in a substantial reduction of the work required of the **incumbent** of Position No. 60. Carrier also asserts categorically, that it "**made** no promises, offered no advice, nor made **any** predictions on any subject" dealing with the alleged rate **increase**. The Carrier contends that prior to the abolishment of Position No. **60**, the incumbent of that position and the incumbent of Position No. 59 both performed some of the duties listed by the Organization and, furthermore, **some** of the work **is** performed by other clerical **positions**.

Our evaluation of the record satisfies us that the parties are in direct conflict on the evidence presented, to the extent that we are unable to make a reasoned finding on the issue. In our Award 20408 we stated the principle applicable to the present dispute as follows:

'The Board has often held that in the face of a conflict, such as that presented here, it will dismiss the claim on the basis that claimant has failed to establish facts sufficient to require or permit a finding that Carrier' violated the Agreement...".

The Carrier also asserts a time limit violation occurred in this case; however, because of our disposition of the claim as stated above, we need not consider the respective contentions dealing with that 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. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 15th day of December 1980.

