

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number **23158**
Docket Number **CL-23066**

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (Brotherhood of **Railway, Airline** and Steamship Clerks,
(Freight **Handlers**, Express **and** Station **Employees**
(Missouri-Kansas-Texas Railroad Company

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood (GL-8832)
that:

1. Carrier violated the **Rules** of the Clerks Agreement, including but not limited to **Rule** 44 of DP-451, when by Bulletin No. 101 of December 20, 1977 it abolished a five (5) day Position No. **1526** located at Franklin-Columbia, Missouri to be effective January 8, 1978, and then by Bulletin No. 103 of December 21, 1977 it advertised a six (6) day Position No. **1532** at Franklin, Missouri with title of Agent-Telegrapher, and **shown** as a reinstated position.

2. Carrier shall be required to compensate the incumbent of **Agent-Telegrapher** Position No. **1532** and any future **incumbent** of that position for eight (8) hours pay at the applicable one and **one-half** rate for each Saturday **commencing** January 14, 1978 and for each Saturday thereafter, or until such **time** as violation is corrected.

OPINION OF BOARD: The Organization cites a December 20, 1977 Bulletin No. 101 which abolished Consolidated Agent Position No. **1526**, effective January 8, 1978, and on the **same** date Bulletin No. 102 advertised a **six** (6) day Agent Telegrapher Position No. 1532. The bulletin stated that the position was a "reinstated position."

The Organization has referred to certain position abolishment in December of 1974, and asserts **that** the December 19, 1977 bulletin is improper because it advertises the six (6) day position as a "reinstated position." But, it asserts that under the pertinent rules, the position cannot be **considered as "reinstated."** Accordingly, claim was made for 8 hours' pay **at the** time and one-half rate for Saturdays, as required by **Rule** 45.

The parties have made repeated reference to the "Note" to **Rule** 44, which states:

"The above provisions of this **Rule 44** pertaining to 40 hours work per week do not apply to the following positions, whose monthly rate **compensates** for six days per week - **211-2/3** hours per month (**212-1/3** hours per month effective January 1, 1973)."

The position which was abolished in December, 1974 was included in the Note to **Rule 44**.

The Organization argues that when the Carrier abolished the position, it removed that position from the exceptions to **Rule 44**, and thus an attempted reinstatement of the position without paying the overtime compensation, as required by **Rule 45**, is prohibited.

It **is** our view that **Rule 18** of the **agreement** permits positions to be reinstated. Clearly, **Rule 18** contains certain restrictive provisions which apply if the position is reinstated within **ninety** (90) days, however, that does not prohibit the Carrier from reinstating the **position** after ninety (90) days have elapsed.

We have, of course, **confined** our review of this matter to the dispute as considered and handled **on the property**. References to **Rule 59(b)** are accordingly misplaced in our review of the matter.

We have considered the Organization's contentions at length; however we are unable to find **any** rule of the **agreement** which lends support to the assertion made by the Organization that abolishment of a position automatically removes that position from the exceptions to **Rule 44**, if that position is reinstated as permitted by **Rule 18**.

We have considered the Awards cited by the Organization in the oral presentation to us, however we do not **find** that they are pertinent to the type of agreement and record **here** before us. **Accordingly**, we will deny the **claim**.

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: h & b & & & & -
Executive Secretary

Dated at Chicago, Illinois, this 30th day of January 1981.