

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23297
Docket Number CL-23150

John J. Mikrut, Jr., Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
(The Baltimore and Ohio Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-8905) that:

(1) Carrier violated the Clerk-Telegrapher Agreement in effect between the Parties when, effective Wednesday, June 1, 1977, it instructed and required James I. Wise, Jr., incumbent position C-146 - Report, Discipline and Tonnage Clerk, Division Manager's Office, Baltimore, Maryland, to perform higher-rated duties diverted from partially-excepted "B" position No. 29 - Secretary to Superintendent - System, Hagerstown, Maryland, without being compensated at the established rate of the work performed, and

(2) Because of such impropriety, Claimant Wise shall now be paid the difference between what he was paid as of June 1, 1977, (\$53.67 per day) and what he should have received (\$56.92 per day), plus the general wage increase of July 1, 1977 for all work days he was and is subsequently required to perform the higher-rated work transferred from "B" position No. 29 to his assigned position C-146, retroactive to and including June 1, 1977.

OPINION OF BOARD: Claimant, a Report-Discipline-Tonnage Clerk, position C-146 (\$53.67 per day), was assigned to the Division Manager's Office at Baltimore, Maryland.

On May 13, 1977, Carrier permanently abolished the General Clerk position C-637 in the Superintendent's Office at Hagerstown, Maryland. Said position was rated \$55.10 plus \$1.52 Cost-of-Living Adjustment (\$56.52 per day) and among the duties performed by the incumbent were:

"Handle various daily, weekly and monthly reports including RDG Company Crew Mileage Report, percentage of power report, various engine hour reports, etc."

The above described work was transferred to a partially-excepted "B" class position, B-29, Secretary to Superintendent/System, at Hagerstown, Maryland. The latter position was rated at \$56.92 per day, which included \$1.52 Cost-of-Living Adjustment. Soon after the above stated transfer of duties was effectuated, the "B" position incumbent retired and on May 18, 1977,

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her **partially-excepted** position was advertised for bid by **Carrier**. The bulletined vacancy was identified as Position No. B-29, Secretary to **Superintendent System** and the basic duties were described as **follows**:

"Perform general secretarial duties including dictation alla typing. Transcribe Investigations. Type stencils for and distribute bulletin orders, slow orders and general orders. Maintain records of retiring employees and handle requests for retirement certificate. Handle incoming and outgoing mail. Filing. Handle various daily, weekly and monthly reports including RDG Company Crew Mileage Report, percentage of power report, various engine hour reports, etc., key operator for office Xerox machine. Prepare violation of Hours of Service Law Report and perform any other duties as instructed."

As a result of the vacancy posting the senior qualified **employee** who was **assigned** to position R-29 was a Clerk-Typist at **Hagerstown, Maryland**. However, for reasons which are unclear in the record, on June 1, 1977, a portion of the work **which** had been originally assigned to **Position R-29**, Secretary to Superintendent/System at **Hagerstown, Maryland**, was transferred to Claimant, position **C-146**, at the Division Manager's Office, **Baltimore, Maryland**. The specific duties which **were** transferred to Claimant were as follows:

"...preparing reports Involving **Reading Railroad** engines and crews and reports covering **B&O** engines and crews, preparation of reports Involving **ConRail engines**, and verification of monthly statements involving use of Western Maryland Railroad engines on Reading and **ConRail** lines."

On October 11, 1977, Claimant's Organization filed a claim on his behalf contending that the transferred duties **were** previously **performed** by **employees** in higher-rated positions and that Claimant, therefore, should have been **compensated** for the difference of the **two** rates. In support, of its basic position, **Organization** maintains that Carrier's action was **in** violation of Rules 15, 16 and 17 of the parties' existing agreement; that **said** change was a "material" change in Claimant's assignment; and that "(A)n **employee** assigned to **perform** higher-rated duties is not required to **perform** all of the duties of the **higher-rated** position in order to be entitled to the higher rate" (Third Division Awards **12088**, **14681** and **20038**).

Carrier's position herein is that, though the transferred duties involved the preparation of a **report** which Claimant heretofore **had not prepared**, such report preparation work was the type of work which was **considered** to be a **normal part** of Claimant's Report-Discipline-Tonnage Clerk duties and, therefore, **was not "new"** work (Third Division Awards **21842** and **22567**); nor was it a **"material"** change (Third Division Award **22804**).

Further, **Carrier maintains** that the higher rate of **pay** which was assigned to the **two** (2) secretarial **positions** (C-637 and B-29) was not assigned because of the "requirement to prepare reports," but rather because of the "secretarial duties" which were involved in these jobs. **Accordingly, Carrier** argues that Claimant was not assigned **any** of the **higher-rated** secretarial duties which were attached to the position of Secretary to Superintendent at **Hagerstown**, but was assigned only the one (1) additional report **preparation** responsibility which "required **approximately** forty-fire **(45) minutes** to one (1) hour's time per day to **prepare.**"

In addition **to** the above cited arguments, Carrier also **maintains** that the instant claim "represents nothing more than a request for an increase in **pay** on the **assignment** held by the **Claimant** Report-Discipline-Tonnage Clerk." Thus, in this **regard**, Carrier maintains that such requests are the **proper** subject for direct negotiations between the parties and that, under such circumstances, the Board **is** without authority to reclassify positions or to order a change in rates of pay (Third **Division Awards** 12672, 14966, 15341 and 18638).

The **Board** has carefully read and reviewed the entire record which has **been presented** In this **dispute** and finds that Carrier's position is correct and must be sustained,

In arriving at the above posited conclusion, the Board is convinced that Rule 17 of the **Agreement** rather than Rules 15 and 16 is solely applicable In this **analysis** since said Rule alone addresses the specific issue which is before us in the instant dispute (permanent transfer of job duties from one **position** to another). Given the facts of record therefore, there can be **no** doubt that the particular duties which **were** assigned to **Claimant** and which are contested herein came **from a** higher-rated position which **was abolished** by Carrier. However, there can be no doubt that the nature of the work which was **involved** in the transferred duties was of a "like **kind**" in both substance and responsibility to the **work** which Claimant was **already** performing in **his** position as **Report-Discipline-Tonnage Clerk**. In view of this **particular** determination, and Insofar as the record **is** inconclusive in regard to whether a forty-fire (45) minute to one (1) hour addition of similar clerical duties constitutes a "material" change in Claimant's position, we must conclude that the disputed transfer was appropriate and proper.

In similar fashion, **Referee Larney** in Third Division Award 22804, which involved the same **parties, summarized** as follows:

"With **respect** to Rule 17, said rule embodies a **formula** for fixing **compensation** when new positions are created, when duties **are materially** changed or when existing positions are changed **from one class to another.**"

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"We find in the instant case no new positions created nor a change in existing positions from one class to another. Furthermore, we are unable to find in the record a preponderance of probative evidence which supports Petitioner's allegation that the work transferred from the Crew Callers Office in Hagerstown to the Crew Callers Office in Cumberland in any way materially changed the work of the Claimant Crew Dispatchers. Rather, we find that even though the transferred work resulted in an increase in the number of train and engine service employees to be called by the Claimant Crew Dispatchers, nonetheless, the nature of the work involved remained the same. We find nothing in the record to dispute the fact that subsequent to February 2, 1976 when the transferred work took effect, the Claimant Crew Dispatchers continued to work eight (8) hours per day calling crews the same as they had always done" (Emphasis added by Board).

Because of the similarity of facts involved in the **aforecited** award, as well as this **Board's** concurrence with the conclusion reached **therein**, the **Board** can see no reason to deviate from the direction provided by said award, and we therefore **dismiss** the instant claim for failure of proof. Moreover, the **Board** further sees fit to note that, insofar as the parties themselves know best what duties are required in these disputed positions, as well as the amount of time and effort needed to perform same, any **dispute** regarding the matter of compensation for such positions is, in the final **analysis**, best accomplished through direct negotiations between the **parties** themselves rather **than through** review by this **Board** (Third **Division** Awards **12672**, **14966**, **15341** and **18638**). The parties are hereby so advised.

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.

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Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: AW. Pauloz
Executive Secretary

Dated at Chicago, Illinois, this 15th day of May 1981.