

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23359
Docket Number CL-23206

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-8970) that:

(1) Carrier violated the Rules **Agreement between** the parties including but not limited to **DP-526 and** Rules 36(a), 36(b), 59 **and 62** of DP-451, when at **Denison**, Texas, it abolished Special Accountant Position **No. 43**, formerly occupied by Clerk W. E. Schwetke without proper notice and then established the lower rated Position **No. 31**, Accountant, Corporate Accounting Control, Seniority District No. 4, to perform the higher rated work of the abolished position.

(2) **Carrier** shall compensate **Ms. F. Y. Hardenburg** and/or her successors on Accountant Position No. 31, the difference in the rate of **pay** of the lower rated accountant Position **No. 31, \$61.82** daily **and** the higher rated Position of Special Accountant No. 43, **\$65.20** daily, to include any subsequent wage changes for July 17, 1978, and each subsequent work day thereafter on a continuing basis until such time **Carrier** applies the proper rate to **Accountant** Position No. 43 on a permanent basis.

OPINION OF BOARD: In July of 1978, the **Carrier** abolished the Special Accountant position in Corporate Accounting **Control** because it was "no longer required", **and** a new position was advertised. That new position (Accountant, Corporate **Accounting** Control) was awarded to the Claimant and she received a daily rate which was less **than** the rate paid to the abolished position.

Among the rules cited, the Organization has placed a reliance upon Rule 36(b):

"(b) Established positions shall not be discontinued and new ones created **under** a different title, covering relatively the same class of work, for the purpose of **reducing** the rate of pay or evading the application of these rules."

In **this** regard, the Organization cites one of Carrier's letters of **declination**, in which it is stated **that** certain duties listed in the abolished position are included among the duties of the new **posi-**tion. **The** Carrier asserts that that inclusion is **immaterial** and **ir-**relevant because for scum? time the occupant of the prior position was **paid** to perform work similar **to** the work of an Accountant receiving the lower **rate** after the special work for which the position **was** created and rated had been assigned to the Cost **and** Research Bureau of the **Accounting** Department.

The Carrier equates the work in question as more properly the type performed by other Accountants, and insists that there is no need for the Special Accountant position, **and** states that the **Carrier** is not required to maintain **unnecessary** positions. Be that as it may, we **are** of the view that other considerations control the **outcome** of the dispute.

We **have reviewed the various factual assertions** put **forward** by **the** Carrier concerning the manner in which the position **came into ex-**istence **and** various asserted erosions **to** the position over the course of time until the incumbent retired in 1978. Nor have we ignored the **assertions that the duties of the newly created position are similar to other accounting positions.** Nonetheless, we continue **to** return to **Rule 36(b) of the Agreement between these parties.** In that regard, our attention has been invited to a recent **Award** of this Division re-solving a dispute **between** these same **parties.** Award No. 22775 concerned an abolishment of a cashier position and assignment of certain duties of that position to a clerk position. There, the **Board** found that the Claim-ant **had** been assigned duties which had been **assigned to** the abolished position, **and** here the **Carrier** has conceded that fact. The **author of Award No. 22775 determined that after abolishment of the position "... remaining duties must be assigned as the rule requires."** It has long been held that when a similar dispute has been resolved between **two** parties, that resolution should control future **similar** disputes unless the prior resolution is palpably erroneous; regardless **of the manner in** which the second Referee **might** have viewed the original **dispute.**

We are unable **to find Award 22775** to be palpably erroneous, and **accordingly** we will sustain 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 violated.

A W A R D

claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By **Order** of **Third** Division

ATTEST:



Executive Secretary

Dated at **Chicago**, Illinois, this 14th **day** of August 1981.

DISSENT OF CARRIER MEMBERS
TO
AWARD 23359, (DOCKET CL-23206)
(REFEREE J. SICKLES)

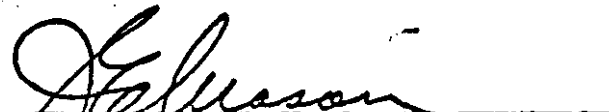
While the Majority has "reviewed" the facts and has not "ignored" that the duties, that initiated the creation of the Special Accountant position no longer existed, and therefore there was no further need of that position, the Majority compounded the error of Award 22775 by relying upon it as **dispositive in** this case.

For the **same** reasons as were detailed In the Carrier Members' dissent to Award 22775, **dissent** to this Award **is also** required.


P. V. Varga


W. F. Euker


D. M. Lefkowitz


J. E. Mason


J. R. O'Connell