

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23384
Docket Number U-23053

James F. Searce, 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-8894) that:

(1) Carrier violated the Clerk-Telegrapher Agreement when, following the date of Monday, August 29, 1977, It instructed and required Mr. D. B. Bonham, incumbent of Traveling Agent position 28000302, headquartered at Willard, Ohio, to take-over the duties and responsibilities of concurrently abolished Control Agent position 28000301 at Willard, Ohio, without receiving the proper compensation therefor, and

(2) Because of such impropriety, Carrier shall be required to compensate Claimant D. B. Bonham, incumbent of Traveling Agent position 28000302, Willard, Ohio, and his successors, a total of one-dollar thirteen cents (\$1.13) per day, representing the higher-rate between abolished Control Agent position 28000301, (\$64.71 per day) and surviving Traveling Agent position 28000302, (\$63.58 per day) plus subsequent general wage increases, commencing August 29, 1977, and continuing each and all subsequent work-dates.

OPINION OF BOARD: In September, 1975, Carrier established at Willard, Ohio, two (2) Agency positions - 8 Mobile Agent and a Control Agent. In accordance with the provisions of the controlling Agreement, the rates of pay of these two Agent positions were established so that the Control Agent received \$1.00 per day more than the Mobile Agent. Through subsequent wage increases the differential became \$1.13.

Claimant was the incumbent of the Mobile Agent position when on August 30, 1977, the position of Control Agent was abolished. Petitioner alleges that thereafter the incumbent of the Mobile Agent position was required to absorb the duties of the Control Agent position and, therefore, is entitled to the higher rate of pay which the Control Agent received. Petitioner argues that Rules No. 16, 17 and 20, as well as Appendix I of the Controlling Agreement support their contentions. The Carrier argues that the Agency duties were common to both the Control Agent as well as the Mobile Agent and that there is no justification for any higher rate to the Mobile Agent because the differential which existed was required by Agreement for the Control Agent and did not create a "higher rated" work situation.

Rules No. 16, 17 and 20 read as follows:

RULE 16

Preservation of Rates

"(a) Employees temporarily assigned to higher rated positions, shall receive the higher rates for four (4) hours' work or less, and if held on such positions in excess of four (4) hours, a minimum of eight (8) hours at the higher rate. Employees 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 employee. Assigning a higher rated employee due to a temporary increase in the volume of work does not constitute a temporary assignment."

RULE 17

Change in Duties and New Positions

"When new positions are created, duties of existing positions materially changed or duties of existing positions changed from one class to another, compensation will be fixed in conformity with the same class and character of positions as are specified in the wage scale for the portion of the division on which located, and the rules will apply to employees filling such positions; provided, the entering of employees in the positions occupied in the service or changing their classification or work shall not operate to establish a less favorable rate of pay or condition of employment than is herein established. New rates of pay to be effective from date first taken up by the representative of the employees.

(It is understood that when increases are granted under the terms of this paragraph to certain positions on account of increased duties, such increases will be eliminated when the increased duties for which the increase was granted are discontinued.)"

RULE 20

Rates

"Established positions shall not be discontinued and new ones created covering relatively the same class of work which will result in reducing rates of pay or evading the application of these rules."

Appendix I of the June 4, 1973 Agreement is a Memorandum of Agreement which provides a procedure by which --

"Carrier may establish Mobile Agent and/or Control Agent positions for the purpose of handling agency work at more than one station on 8 seniority district in accordance with the Rules Agreement between the parties signatory hereto and, in addition, it is agreed:

* * * *

The rate of pay of the newly-established Mobile Agent position will be the highest basic rate of any of the involved abolished positions plus \$1.00 per day and, where position of Control Agent is also established, the rate of pay of such position will be \$1.00 per day in excess of the rate of pay of the Mobile Agent position.

* * * *"

Rule 16 does not apply here because by its very language it refers to 8 situation where employees are "temporarily assigned to higher rated positions". Such is not this case.

As for Rules No. 17 and 20, we are unable to find in the record any probative evidence to support the allegation that the duties of the Mobile Agent were "materially changed" or that any position was "discontinued and new ones created covering relatively the same amount of work".

Appendix I of the Controlling Agreement is not applicable to the claim situation here involved.

Based on the totality of record before us, we are unable to conclude that the Carrier has required Claimant to perform any service which would entitle him to the monetary differential claimed.

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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: *A. W. Paulsen*
Executive Secretary

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

