

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23494
Docket Number CL-23131

James F. Searce, Referee

PARTIES TO DISPUTE:

{ Brotherhood of **Railway**, Airline and Steamship Clerks,
Freight Handlers, **Express** and Station **Employees**
(**Louisville** and **Nashville Railroad Company**)

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood
(**CL-8876**) that:

1. Carrier violated **and** continues to violate the Agreement between the parties when it unilaterally abolished, at end of assignment June 30, **1978**, the Rate Analyst position in the District Sales Office, Cincinnati, Ohio and transferred assigned duties, being performed by employees under the Agreement, to employees not so covered on another railroad (SCL Division of the **Family Lines**) at **Jacksonville**, Florida.

2. Carrier shall, because of the **violation** cited in (1) above;

- (a) Re-establish the Rate Analyst position.
- (b) Compensate Clerk Tepper and all others affected by the abolishment any loss of pay incurred as a result of the violation **commencing** July 3, **1978** and to continue until the violation is corrected.
- (c) Compensate the senior available extra clerk a day's pay for each date the violation existed account of being affected due to the rollback as a result of the **abolishment**.

OPINION OF BOARD: Effective June 30, **1978**, the Carrier abolished a position of Rate Analyst at its Cincinnati Division; the work performed by the incumbent or this former position was described as quoting rates to customers, checking routes, as well as other related duties. According to the Organization, such duties were assigned to employees of another railroad (SCL) at another location (Jacksonville, Florida); customers were purportedly afforded a toll-free line by which such information could be obtained.

By letter dated July 11, 1978, the Vice General Chairman protested such action to the Carrier's Director of Labor Relations, advising that the appropriate district official would be instructed to file claims in this regard. On July 16, 1978, the District Chairman filed a claim with the District Sales Manager setting forth the particulars as heretofore stated and establishing a blanket claim on behalf of the Claimant and all others affected by the action. By letter dated September 19, 1978 the Vice General Chairman's July 11 letter was responded to by the Carrier, denying that the Carrier's

~~actions~~ were violative of the ~~Agreement~~. Thereafter, continuing ~~claims~~ were ~~filed~~ by the ~~Organization~~ and a claim ~~was also made~~ that the Carrier's failure to reepond to this ~~claim~~ within 60 days, according to Rule 45, made it ~~ripe~~ for ~~implementation~~ es stated. The Carrier denied such liability, ~~contending~~ instead that the Organization had raised the claim to the wrong official: per the Carrier, such ~~claims~~ should have been referred to the Aeeietant ~~Trainmaster-Agent~~. It also asserts that the ~~matter~~ of furnishing of rates as herein disputed had been assigned to the Chief Rate Clerk, located at ~~DeCoursey, Kentucky~~ and within the same seniority District (30) as ~~was~~ the ~~incumbent~~ of the abolished position. The Carrier contends it ~~is~~ entitled to adjust its work forces, ~~including~~ the elimination of jobs and that neither the Claimant ~~nor~~ any other ~~employee~~ suffered a lose of ~~compensation~~ by such action, except by their own prerogative to opt for a lower-rated job than was available.

We need not look past the opposing questions of the filing of and response to the claim to dispose of it. The threshold question ~~is~~ whether or not the claim was ~~timely~~ and properly filed by the ~~Organization~~. Specifically, did the Organization raise the matter to the proper official. We conclude the record supports the Organization ~~in~~ this regard. The ~~Organization sets~~ forth a showing that this matter was a subject of correspondence between the parties well ~~in~~ advance of the disputed job abolishment and that the District Sales ~~Manager~~ was the proper official to receive such a claim., It is noted by this Board that a showing to the contrary by the ~~Carrier -- i.e.~~ that the "designated officer" to receive such ~~claim~~ was the Aeaiaetant ~~Trainmaster-Agent~~ -- was not ~~forthcoming~~ until rebuttal argument was presented by the Carrier to this Board. At that time, it presented (as Exhibit "AA") a "Seniority Roster" for District 30 dated February 7, 1978 which was signed by "H. E. Adams," who was identified as Aeeietant ~~Trainmaster-Agent~~ at ~~DeCoursey~~ Yard with the designation of "Officer in Charge".

In ~~sum~~, we consider the provision of Article 45 of the Agreement to control here. As to the remedy requested we are not persuaded that ~~Claim 2~~ (a) ~~is~~ necessarily a required condition of resolution, but direct that 2(b) and 2(c) be addressed by the parties to determine the adverse ~~impact~~, if any, upon ~~the Claimant(s)~~ by such actions. We shall ~~comment~~ on the merits of this case only to the extent that the work performed by Claimant Tepper at the time of dispute in this case may not properly be assigned outside the ~~scope~~ of the ~~relationship~~ between the parties as set out in the term8 of the Agreement. The parties shall resolve all outstanding matters within 90 days of receipt of this Award.

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 Employee involved in this dispute are respectively Carrier and Employee within the meaning of the Railway ~~Labor~~ Act, as approved June 21, 1934;

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That this Division of the **Adjustment** Board has jurisdiction over the dispute involved herein; end

That the Agreement **was** violated.

A W A R D

Claims sustained in accordance with the Opinion.

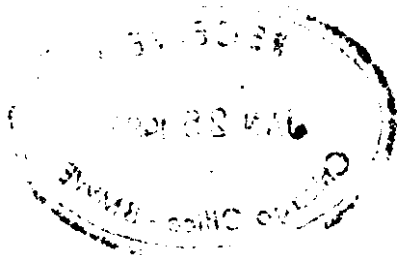
NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **Third** Division

Attest:

A. W. Paulsen

Executive **Secretary**

Dated at Chicago. **Illinois**, this **8th** day of **January** 1982.



NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Serial no. 31'1

INTERPRETATION NO. 1 to AWARD NO. 23494

DOCKET NO, CL-23131

NAME OF ORGANIZATION: Brotherhood of Railway, Airline and Steamship Clerks,
Freight Handlers, Express and Station Employees

NAME OF CARRIER: Louisville and Nashville Railroad Company

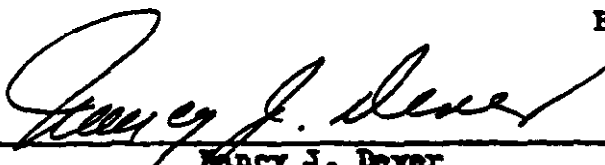
A question has been raised as to the interpretation of Award No. 23494 insofar as the status of the Rate Analyst position, which the Carrier abolished and which forms the gravamen of this dispute, is concerned. It was not the intent of this Board that Award 23494 should have been construed to allow or require re-establishment of such position, or that the work performed by such position were to be returned to the Cincinnati Division. This Board, while finding it appropriate to return the matter to the property and the parties for them to address questions of relief, if any, that might issue to affected employees, specified that such work continued to be resented to employees within the contractual relationship. While the Carrier is entitled to effect management decisions as to how such work is to be performed, the affected employee are entitled to all benefits in effect where jobs are abolished and/or work is moved elsewhere; such provision may include Washington Job Protection, etc. and the parties were and continue to be expected to apply any and all such relief. Even the foregoing interpretations, the parties are directed to finalize this matter.

Referee James F. Searce who sat with the Division as a neutral member when Award No. 23494 was adopted, also participated with the Division in making this interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD

By Order of Third Division

ATTEST:



Nancy J. Dever
Executive Secretary

Dated at Chicago, Illinois this 3rd day of August 1983.