

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23927
Docket Number CL-23763

Carlton R. Sickles, Referee

PARTIES TO DISPUTE: { Brotherhood of Railway, Express and Steamship Clerks,
Freight Handlers, Express and Station Employees
Illinois Central Gulf Railroad

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9282) that:

1. Company violated the agreement between the parties effective September 2, 1977, when it began requiring clerk A. F. Walters at Mobile, Alabama to begin performing work and duties of a higher rated position while receiving a lower rate of pay.

2. Company shall now be required to compensate Clerk A. F. Walters in the amount of \$4.05 per day, the difference in the rate formerly paid to the position that was assigned the disputed work and duties, \$63.80 per day, and that of claimants regular position No. 80, \$59.75 per day, beginning September 2, 1977, and continuing until he begins receiving the higher rate of pay.

3. Company violated the agreement between the parties effective August 31, 1977, when it began requiring Clerk W. J. Ralls at Mobile, Alabama to begin performing the work and duties formerly assigned and performed by a higher rated position and refused to allow claimant the higher rated pay.

4. Company shall now be required to compensate Clerk W. J. Ralls in the amount of \$7.21 per day, the difference in the higher rated position, \$63.80 per day, and that of his regular position No. 84, \$56.59 per day, beginning August 31, 1977, and continuing until he is allowed the higher rate of pay.

OPINION OF BOARD: The position of Mr. Prendergast in Chicago was abolished on March 23, 1976 and part of the duties of this position were assigned to Mr. Yancey in Mobile at that time. On August 31 and September 2, 1977, the Prendergast portion of Mr. Yancey's Job was, in turn, reassigned to the claimants. Claimants allege that since Mr. Prendergast occupied a higher rated position they should be paid the difference in pay from the date the reassignments were made.

The claimants rely upon the provisions of Rule 36 (e) which provides as follows:

"When positions are consolidated, the higher rate of pay of the consolidated positions shall apply."

They conclude that when employees are required to perform duties of a higher rated position, they are to receive the higher rate of pay,

The Carrier alleges, however, that Rule 37 (c) is controlling, which provides as follows:

"Duties which have been transferred from a lower to a higher rated position may be reassigned to a position with a rate equal to or higher than that of the original position. The higher rate will not apply to minor duties of a higher rated position."

In this instance, the Carrier indicates that those duties of Mr. Prendergast which were reassigned on the two occasions indicated had previously been reassigned to Mr. Prendergast from clerical positions rated comparable to the clerical positions now held by the claimants. These positions were transferred to Mr. Prendergast who held a management position with the other duties accounting for the higher rating. The Carrier alleges that this particular work was a very minor part of Mr. Prendergast's duties. The Carrier points out that the reassigned duties involved were essentially clerical work whereas the other more significant duties of Mr. Prendergast involved traveling and communication and maintaining statistical records.

claimants have questioned the fact that the work involved was previously of the nature and level described by the Carrier, and asserts that even if it were that since the reassignment occurred prior to the current agreement and prior to the merger, such previous history is not controlling here.

We do not support the claimants position in this regard because we do not find anything which would limit the application of Rule 37 (c) to reassignments after the merger.

When the job of Mr. Prendergast was abolished and the duties were reassigned, a conference was held and the decision was made to assign the work to Mr. Yancey who had a higher rated position than that of Mr. Prendergast. The Organization alleges that this was done because the Carrier was required to do so. The Carrier alleges that it was done in order to keep "peace in the family", thereby preventing the filing of a claim at that time. Given the conflicting assertions as to the reasons for this assignment, we feel that it in itself does not dispose of the matter and leaves the parties where they were. The fundamental question is whether this work assigned was, in fact, originally the clerical work of the level and pay stated by the Carrier.

It is difficult for this Board to ascertain objectively, based upon the record, the proper rating of the duties involved. The Carrier has described in detail the comparability of the work reassigned, to the other work already being performed by the claimants, which was not effectively refuted by the claimants.

However, the basic issue here is whether there is **reason** to believe that these duties were **originally assigned** to **employees** with a lesser pay than **Mr. Prendergast and, in turn, comparable** to the claimants. If this is true, then the **claimants will** not prevail.

The Carrier has demonstrated that the positions which originally included these duties were **located in Mobile, Alabama** prior to the merger and it named the incumbents **performing this type of work. Two of the** incumbents **include** the claimants.

While at one point the claimants allege no knowledge of these facts, they essentially **affirm** that the duties were performed by personnel in Mobile prior to the **merger by designating individuals** who **performed** the functions.

*The question narrows not to the difference in rating between Mr. Frendergast and the claimants, but rather the difference between the **claimants** and the alleged performers of these functions in Mobile prior to the merger and reassignment of these functions.*

As **described** by the Carrier, **and** not refuted by the claimants, the duties reassigned to the claimants appear to be of like **nature** to the **functions** being performed by the claimant.

Claimants have not **demonstrated** that persons who they allege performed the functions were in higher rated **positions** and if so, **that** the higher rated positions were so classified by the nature of the duties in this **matter rather** than other **functions performed** by them. We will deny **the claims**.

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: Acting Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 30th day of June 1982.

