

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25086
Docket Number CL-24874

Hyman Cohen, Referee

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

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9664)
that:

(1) Carrier violates the Clerk-Telegrapher Agreement in effect between the Parties when, effective April 21, 1980, and continuing, it requires incumbent **T. J. Curtis**, incumbent of Chief Clerk position C-47, Riker Yard, Punxsutawney, Pa., to perform work previously and exclusively assigned-to, and performed-by, higher-rated Car Distributor position #B-8 (**N. N. Blose**) at Punxsutawney, Pa., without benefit of proper compensation, and,

(2) Carrier, as a result of such impropriety, shall be required to compensate Claimant **T. J. Curtis** the difference in pay between the rate of Chief Clerk position C-47 (\$72.63 per day) and the rate of former Car Distributor position B-8 (\$76.68 per day) for the performance of such higher rated work, amounting to \$4.05 per day, beginning April 21, 1980, and continuing each subsequent work date until the violative action is corrected.

OPINION OF BOARD: The Claimant is employed by the Carrier as Chief Yard Clerk at Riker Yard, Punxsutawney, Pennsylvania. His claim is based upon the contention that effective April 21, 1980 he was required to begin performing the higher rated duties of a Car Distributor. The duties that the Car Distributor has performed include the handling of agency stations on the entire Buffalo District, distributing all empty rail cars, receiving telephone reports and inquiries from all agents **on the** Buffalo District, distributing all empty rail cars, receiving telephone reports and inquiries from all agents on the Buffalo Subdivision concerning the placement of cars and where to bill the needed equipment. On December 1, 1979 the position and work of the Car Distributor at Punxsutawney was transferred to Pittsburgh, Pennsylvania.

On April 21, 1980 the Carrier implemented a computerized system for the distribution of empty rail cars. Data and instructions which are updated were programmed into the system computer. Riker Yard was one (1) of the Data Reporting Stations established. Since April 21, 1980, the Claimant has entered data in the computer on the movement and location of all rail cars in the Carrier's system and he obtains from the **computer**, a disposition of empty cars.

After carefully examining the record, the Board concludes that as of April 21, 1980, the duties assigned to the Claimant's position of Chief Yard Clerk have been materially changed by the addition of the higher rated duties of the Car Distributor position. The Claimant generates input concerning car orders and order numbers into the computer instead of keeping paper records; he also receives dispositions on empty rail cars by computer and furnishes advice to personnel at

outlying points concerning the disposition of empty cars at those locations. Such work was formerly performed by the Car Distributor position which had been in existence at **Punxsutawney** before December 1, 1979.

It may very well be true that car distributions are actually made by the computer based on information generated into the computer by the Carrier's clerical personnel, which includes the Claimant. **Thus**, the Claimant is not making the decision to distribute empty cars that were made by the Car Distributor prior to December 1, 1979. However, the Carrier's system computer which began operation at **Punxsutawney** on April 21, 1980 have made such decisions unnecessary.

It **is** of great weight that as of April 21, **1980**, both the Car Distributors and the Claimant have performed the same tasks in utilizing the computer for the disposition of empty cars. Although the computer, rather than the Claimant, makes the decision to distribute empty cars, in Third Division Award No. 19575, referring to a "similar case (Award **6870**)", the following has been stated:

"**(T)his** Board has long been committed to the rule that it is not necessary for an employee to take over and perform all of the duties and responsibilities of a higher rated position in order to be entitled to pay at the higher rate."

Since April 21, 1980, the duties performed by the Claimant have been materially changed and the position of Chief Clerk was changed from one class to another. Accordingly, the Carrier violated Rule 17 which, in relevant **part**, provides as follows:

"Change in Duties and New Positions:

When new positions are created, duties of existing positions materially change or duties of existing positions change 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 of 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."

The Carrier is required to compensate the Claimant the difference in pay between the rate of the Chief Clerk position **and** the rate of the former Car Distributor position amounting to \$4.05 each day beginning April 21, 1980 and continuing each subsequent work day until the violation is corrected.

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

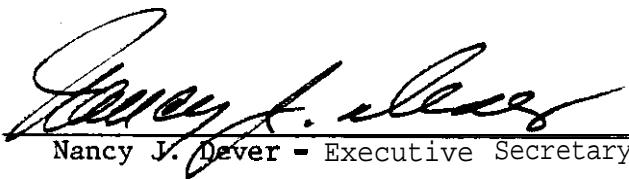
That the Agreement was violated.

A W A R D

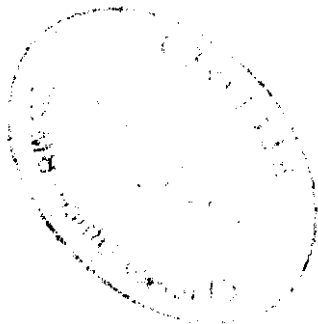
Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 23rd day of October, 1984.



CARRIER MEMBER'S DISSENT TO
AWARD NO. 25086, DOCKET NO. CL-24874
REFEREE HYMAN COHEN

The record before the Board in Docket No. CL-24874, Award No. 25086 does not support the decision of the Majority to sustain the claim. Evidence of this conclusion is found in the fact that the Majority correctly found:

- 1) Decisions pertinent to the distribution of cars are the function of the Car Distributor position,
- 2) Claimant did not perform this function, and
- 3) On December 1, 1979, the position and work of the Car Distributor at Punxsutawney, PA., was transferred to Pittsburgh, PA.

To arrive at its decision, the Majority had to go beyond the question at issue and erroneously ~~determine~~ that Car Distributors no longer make decisions concerning proper distribution of cars.

The issue or question framed by the Organization and brought for resolution concerned whether the Claimant was required "to perform work previously and exclusively assigned to" the Car Distributor position at Punxsutawney.

In light of the Majority's finding that the position and work of the Car Distributor at Punxsutawney had been transferred to Pittsburgh, the only logical and rational answer to the question brought by the Organization is NC, since the work no longer existed.


We must also note for the record that the Majority erred in failing to indicate in their decision that no consideration was given to the Organization's thirteen (13) pages of exhibits submitted to the Board but never made a part of the handling on the property as required by the Rules of Procedure set forth in Circular No. 1

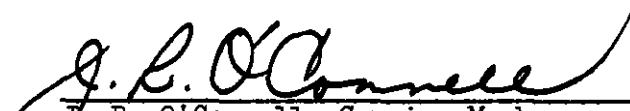
of the NRAB issued October 10, 1934.

The Award is palpably erroneous on its face, and defective by the obvious consideration of evidence improperly before the Board.


We, therefore, vigorously dissent.


J. E. Yost, Carrier Member


W. F. Euker, Carrier Member


J. R. O'Connell, Carrier Member


P. V. Varga, Carrier Member


T. F. Strunck, Carrier Member

