

The Third Division consisted of the regular members and in addition Referee Rodney E. Dennis when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union
(
(Missouri Pacific Railroad Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood
(GL-10250) that:

1. Carrier violated the TCU (formerly BRAC) Agreement when it abolished the Star Agent's position, a six (6) day position, rated \$2,787.23 per month on the date of October 15, 1985, at Poplar Bluff, Missouri and; on the date of October 16, 1985, established lower rate five (5) day position of OCC Clerk/Telegrapher, rated \$99.02 per day with relatively the same class of work.

2. Carrier's action in the instant case was in violation of the Schedule Agreement, expressly Rule 31(b) and related rules contained therein.

3. Carrier shall now be required to compensate Mr. D. W. Howell and/or his successor(s) for the difference in the daily rate of pay of OCC Clerk/Telegrapher rate \$99.02 per day and that of his former Star Agent position rate of pay of \$2,787.23 per month beginning October 16, 1985, and continuing each work day thereafter, Monday through Friday and; including any additional work on Saturday and Sunday each week to be pro-rated on actual time worked covering the difference in the two (2) above rates on a punitive basis until such time as the violation of the TCU Agreement is corrected and; to include all subsequent general wage increases."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

On October 15, 1985, Carrier abolished the Star Agent's position at Poplar Bluff, Missouri. The position was a six (6) day monthly rated job that paid \$2,787.23 per month. On October 16, 1985, Carrier established a lower rated five (5) day position of OCC Clerk/Telegrapher, rated \$99.02 per day. The Organization contends that Carrier violated Rule 31(b) of the Agreement by so doing. That Rule reads as follows:

"Rule 31

(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."

Carrier relied heavily on its explanation of what has happened over the years in relation to the Star Agent position to support its action:

"The Star Agent at Poplar Bluff at one time handled cash and accounts receivable for the Railroad, responded to shipper car orders, handled customer complaints and, as indicated by the title, served as Railroad's Agent for a specified territory. With the increased use of computers, improved communications and centralization of many of the accounting, customer service and car order functions, the need for the Star Agent position has diminished. The Star Agent work at Poplar Bluff diminished to the point where the position was no longer needed and was being asked to perform lower rated duties in order to provide the position with eight (8) hours of work per day. When authority was granted to close the agency at Poplar Bluff, all Star Agent work disappeared completely. At that time, the Carrier established another Telegrapher Clerk position at Poplar Bluff in accordance with Rule 31(a) of the Controlling Agreement. Because the position was established after the Star Agent position performed Telegrapher Clerk work, the rate was set at \$99.02 per day in accordance with all other Telegrapher Clerk positions at Poplar Bluff."

This Board has reviewed the record and we are persuaded that Carrier's position must prevail. We find nothing in the record to refute Carrier's argument that over the years, the duties of the Star Agent were diminished to the point that the position was no longer needed and was kept in place because a local law required it. Once the law was changed, Carrier moved to abolish a position that was no longer required. The Organization has not carried its burden in this instance and the Claim shall be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest.


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 6th day of June 1989.

LABOR MEMBER's DISSENT TO

AWARD 27940, DOCKET CL-28338 & AWARD 27941, DOCKET CL-28341

(REFEREE DENNIS)

The Majority Opinion has erred in both cases at bar and has issued decisions which are contrary to precedential Award 25109 decided on the same property involving the same parties and same question which sustained the Organization's position. The Majority Opinion in both instances has ignored that Award. Ignoring that lead Award has led to these two palably wrong Awards.

For the sake of brevity we will only reiterate the facts and our position in Award 27940 as they apply equally in Award 27941.

Award 27940 is a case wherein the Carrier abolished on October 15, 1985, the position of Star Agent/Telegrapher No. 006, Poplar Bluff, Missouri, rated \$2,787.23 per month on the pretense of a "closing of an agency", and then simultaneously bullentined a new position of OCC Clerk/Telegrapher a five (5) day position, rated \$99.02 per day to be effective October 16, 1985, doing relatively the same work at a lower rate in violation of Rule 31 (b).

Rule 31 (b) states:

"(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."

It stands unrefuted that the duties of the two positions in question were and are as follows:

STAR AGENT/TELEGRAPHER DUTIES

1. Post general orders and general notices
2. Phone meal orders to Illmo for Train and Enginmen

OCC CLERK/TELEGRAPHER DUTIES

1. Same Duty
2. Same Duty

STAR AGENT/TELEGRAPHER DUTIESOCC CLERK/TELEGRAPHER DUTIES

- | | |
|---|---------------|
| 3. Work with CMS (Crew Management System) regarding trains called | 3. Same Duty |
| 4. Deliver pay checks and various other duties as may be assigned | 4. Same Duty |
| 5. Updating all car movements from Trainmens switch lists | 5. Same Duty |
| 6. Copying car orders from customers & making switch lists. | 6. Same Duty |
| 7. Getting day's billing from customer & sending by computer message to St. Louis for handling | 7. Same Duty |
| 8. Making supply requisitions for station supplies & caboose supplies | 8. Same Duty |
| 9. Ordering fuel & ice from local suppliers for engines & cabooses | 9. Same Duty |
| 10. Make written instructions to switch crews & over-the road crews i.e., (pick-up, set-outs, spotting instructions for yards, industries & rip tracks.) | 10. Same Duty |
| 11. Miscellaneous duties including but not limited to: tracing cars, coordinating customer & mechanical forces needed for prompt repair and movement of cars. | 11. Same Duty |
| 12. Work with the Chief Dispatcher | 12. Same Duty |
| 13. Some minor Accounting Duties | |

The only difference in the two positions are Duty No. 13. Twelve (12) out of the thirteen (13) separate major duties are still being done by the lower rated position. The Majority Opinion would ask us to believe that all the other twelve (12) duties are of a lower rated nature and that the Star Agent's higher rate is based upon one (1) duty only. We do not believe that reasoning is logical nor do we think the Majority Opinion should have bought such a erroneous argument offered by the Carrier.

Rule 31 (b) mandates that 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.

We submit that a more careful reading of the facts reveals it is clear that in the instant case at bar, the Carrier abolished the higher rated position of Star Agent, Poplar Bluff, Missouri, established the lower rated position of OCC Clerk/Telegrapher the following day doing relatively the same class of work for the purpose of reducing the rate of pay and evading the application of the Rules.

It is equally clear that this Board has repeatedly stated that the duties of a newly created position need not be identical with those of a discontinued position, all that is required is that the newly created position does relatively the same class of work. The record is clear that is exactly what happened in this instance.

The Majority Opinion has ignored the correct facts and precedential Award 25109 which has led them to render Awards 27940 and 27941 both of which carry no precedential value. Both Awards are palpably wrong and require strenuous dissent.

A handwritten signature in cursive script, reading "William R. Miller". The signature is written in dark ink and is positioned above a horizontal line.

William R. Miller

Date: June 9, 1989

RESPONSE TO LABOR MEMBER'S DISSENT
TO
AWARD 27940, DOCKET CL-28338
AND
AWARD 27941, DOCKET CL-28341
(REFEREE DENNIS)

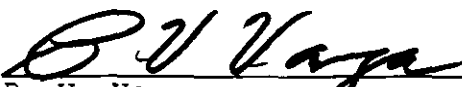
The Dissent lists 13 duties that had been performed by the Star Agent/Telegrapher position and argues that 12 of such duties likewise are performed by the newly established OCC Clerk/Telegrapher position. It refers to the thirteenth duty as "Some minor Accounting Duties." The record on the property, set forth in the Majority decision, shows the "minor" duties of the Star Agent position included the handling of cash and accounts receivable for the Carrier, the responding to shipper car orders, the handling of customer complaints, and, as indicated by the title, the position served as Carrier's Agent for a specified territory.

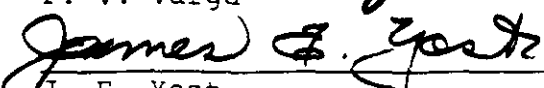
In substance, the Majority held that it was the thirteenth duty that separated the Star Agent position from that of OCC Clerk positions and which justified a higher rate of pay. Accordingly, when such duties disappeared, there was no basis in the Agreement or logic that would require the Carrier to continue to pay the higher rate of a position that no longer existed. Indeed, as was pointed out in Award 27940, the duties of the new position at Poplar Bluff, Missouri, perform precisely the same duties as other clerks working at that location, all of whom are designated OCC Clerks.


M. W. Fingerhut


R. L. Hicks


M. C. Lesnik


P. V. Varga


J. E. Yost