

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29464
Docket No. CL-29811
92-3-91-3-176

The Third Division consisted of the regular members and in addition Referee Hugh G. Duffy when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union
(CSX Transportation, Inc.
(former Seaboard Coast Line Railroad Company)

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood (GL-10557) that:

1. Carrier violated the Agreement on July 10, 1988, when Clerk L. E. Ormsby was instructed by Trainmaster-TSC J. D. Griffis to perform duties previously performed by the incumbent of Swing Relief 'C,' Chief Clerk, Position No. 109, rate \$109.37, on Saturday and Sunday.

2. As a result of the above violation, Carrier shall compensate Claimant Ormsby the difference between the rate of Swing Relief 'C' Chief clerk, Position No. 109, rate \$109.37 per day, and the rate of the newly established Swing Relief 'C' Data Processing Position No. 114, rate \$108.11 per day, and restore the rate of \$109.37 to Swing Relief 'C.'"

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 June 6, 1988, the Chief Clerk position at Hamlet, North Carolina, was changed from a seven day assignment to a five day assignment. Prior to this change, the Swing Relief "C" assignment relieved the Chief Clerk on Saturday and Sunday at the daily rate of \$109.37. A data processing position was then changed from a five day assignment to a seven day assignment, and the original Swing Relief "C" position was abolished and then reestablished to relieve the data processing position on Saturday and Sunday at the daily rate of \$108.11.

The Organization essentially contends that the Swing Relief "C" assignment is performing the same duties as when it relieved the Chief Clerk and that Claimant is entitled to the higher Chief Clerk's rate of \$109.37. It alleges that the Carrier is in violation of the following Rules of the Agreement:

"Rule 27--Established Rates

(a) Rates of pay now in effect and established pursuant to agreements between the parties hereto shall continue in effect until changed as provided in existing wage agreements, by mutual agreement, or in accordance with the provisions of the Railway Labor Act, as amended."

"Rule 28--Changing Title and Rate of Position

(a) 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."

"Rule 30--Preservation of Rates

(a) Employees temporarily or permanently assigned to higher-rated positions shall receive the higher rate while occupying such positions. 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. Assisting a higher-rated employee due to a temporary increase in the volume of work does not constitute a temporary assignment."

The Board has carefully reviewed the record developed on the property and concludes that the Agreement has been violated as claimed by the Organization. In reaching our finding, the Board notes that at no time during the handling of the case on the property did the Carrier come forth with substantive rebuttals to the Organization's material assertions that Claimant in fact performed duties regularly assigned to the Chief Clerk during a portion of his tour of duty as Swing Relief "C" on Saturday and Sunday. Accordingly, the material statements stand as established fact and the claim will be sustained.

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A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dyer - Executive Secretary

Dated at Chicago, Illinois, this 7th day of December 1992.