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NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 29757  
Docket No. CL-30039  
93-3-91-3-442

The Third Division consisted of the regular members and in addition Referee Dana Edward Eischen when award was rendered.

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

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood (GL-10617) that:

(Organization File No. SCL-4.23(9); Carrier's File No. (90-0745))

1. Carrier violated Clerical Agreement on March 6, 1990, when it notified the Organization that Clerks K. J. Albert and L. S. Lucas would be used as Facilitators and their respective rate position duties would not be bulletined but would be absorbed by fellow employees in their rate modules commencing March 1, 1990.
2. As a result of the above violation, Carrier shall compensate with the two Senior Unassigned or Senior Available Clerks for eight (8) hours' pay per day beginning March 1, 1990, and continuing until Clerks Albert and Lucas are put back on their Rate Clerk positions or until such positions are properly bulletined."

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 employe 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 December 29, 1982, the Seaboard Coastline Railroad and the Louisville and Nashville Railroad Company merged. The new corporation was known as the Seaboard System Railroad. On July 1, 1986, the name of the Seaboard System Railroad was changed to CSX Transportation, Inc. Agreements between the former separate Carriers were retained, and the covered employees have continued to work under such. The instant claim alleges Carrier failed to bulletin two Facilitator positions and two Rate Clerk vacancies.

In early 1989, the Revenue Management Department developed a program which was designed to increase quality at the corporate level through the use of "Quality Groups." These groups were composed of both contract and non-contract employees, and were responsible for implementing or "facilitating" new quality control methods in the Department. Employees doing the aforementioned work were given the title of "Facilitator" and performed these duties on a part-time basis. Due to the success of the program, there soon became a need for full-time facilitators.

Two Class 1 Rate Clerks, K. J. Albert and L. S. Lucas, were selected, and assigned work full-time as Facilitators due to their "superior performance" as part-time facilitators. Although both Albert and Lucas continued to be shown on the Departmental payroll as Class 1 Rate Clerks, all rate work was performed by the remaining Clerks. Albert and Lucas did not directly perform any rate work subsequent to March 1, 1990.

On April 27, 1990, the District Chairman filed a claim alleging that the Carrier had violated Rules 11 and 16 of the January 1, 1975 Agreement when it did not advertise the facilitator assignments or the "vacancies" created by Clerks Albert and Lucas when they became full time facilitators. In addition to citing Rules 11, 16 and 34, the District Chairman referenced a Memorandum of Agreement dated February 12, 1987, concerning Ms. C. M. Parks. However, since that Memorandum of Agreement states that it is "without precedent or prejudice to the position of either party," this Board will consider it no further. The Organization also asserted that the Carrier should "compensate the two Unassigned or Senior Available Clerks for eight (8) hours' pay per day beginning March 1, 1990, and continuing until Clerks Albert and Lucas are put back in their Rate Clerk positions or until such positions are properly bulletined."

The claim was denied on June 21, 1990. In his letter of declination, the Assistant Vice President Revenue Management asserted that Clerks Albert and Lucas were not assigned to new positions. They were still assigned to Rate Clerk positions and

were receiving the appropriate pay on those positions. Carrier cited Rule 34 of the Agreement which states:

"RULE 34 - New Positions

The wages for new positions shall be in conformity with the wages for positions of similar kind or class in the seniority district where created. In the event there are no similar positions, the duties and responsibilities of the new position, as compared with those of existing positions on the nearest seniority district, will be taken into consideration. If exception is taken to the rate established for such new position, the rate of the position will be subject to negotiation between Management and the Vice General Chairman."

The Assistant Vice President Revenue Management further stated that there were no senior, unassigned Clerks available to fill the positions, and that the Organization's claim "is procedurally defective in that the Claimants are improper."

For its part, the Organization maintains that there is a requirement that the vacancy created by "the so called" diversion should be bulletined "immediately." According to the Organization, when the vacancies were not bulletined, the Carrier had not adhered to Rules 11 and 16 of the Agreement. The Organization further maintains that had the vacancies been properly bulletined "both furloughed employees in the Revenue Accounting and employees from other seniority districts would have had the opportunity to make application for the vacancies." The Organization points to the C. M. Parks letter and asserts that "the Carrier should have kept with past practice and negotiated same as was done with Facilitator C. M. Parks especially since she was also from Seniority District 9."

The Carrier maintains that this claim is "procedurally defective" and the Organization "failed in its burden to prove that Rules 11, 16 and 34 of the Agreement were violated." Carrier asserts that there "are no unassigned Class 1 Rate Clerks in the Revenue Management Department," and that Clerks Albert and Lucas "were used in the same manner that Clerical employees have been used for Safety Committees, EEO Committees, Labor Management Committees and the like without complaint from your Organization." Carrier further stated that Albert and Lucas were still assigned to, and receiving the pay of, Class 1 Rate Clerk positions and were "simply diverted" to the facilitator positions. "They are covered by the Rules of your Agreement and receive the pay and benefits of a TCU Contract Employee," according to the Carrier.

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There does not seem to be any dispute with the fact that Rate Clerks Albert and Lucas were diverted from their Rate Clerk positions, which also encompassed the role of part-time facilitator, in order to become full-time facilitators. However, the record does not indicate what Albert and Lucas were actually doing. Also, rates of pay are subject to negotiations under Rule 34, not established by arbitration as a "minor dispute." For those reasons, we find that the claim must be dismissed for failure of proof.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest: Catherine Loughrin  
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 20th day of September 1993.