

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29794
Docket No. CL-30019
93-3-91-3-445

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 Coast Line Railroad Company))

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood (GL-10616) that:

(Organization File No. SCL-3.129(1); Carrier's File No. (90-0601))

1. Carrier violated the Agreement on December 7, 1989, when it abolished the Transportation Service Agent, Position No. 141, at Goldsboro, North Carolina and required the preponderant duties to be performed on newly established Agent's position at a lower rate of pay.
2. Because of the above violation, the CSX Transportation shall compensate Clerk J. B. Waddell, ID No. 136872, the difference between the rate of the newly established Agent's position, \$109.37 per day, and the rate of the abolished Transportation Service Agent, Position No. 141.
3. Such compensation to begin on December 8, 1989, and continue each day, five (5) days a week, until claim is settled and the rate is corrected."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 November 20, 1989, per authority of the North Carolina Utilities Commission, the Carrier abolished Position No. 141, Transportation Service Agent, Goldsboro, North Carolina. The position was a six day a week "Mobile Agent" position, monthly rated at \$3062.48. Subsequent to the abolishment, the position was reclassified as Position No. 150, Base Agent. This five day a week job was daily rated at \$109.37.

Claimant was not the incumbent of the abolished Mobile Agent's position. He was, however, in the Assistant Agent's position, monthly rated at \$2902.30 or \$111.27 per day, which was abolished at the same time. The Claimant subsequently bid on, and was awarded the job of Base Agent, (Position No. 150). This dispute pivots on the Organization's allegation that the Carrier improperly abolished the "Mobile Agent" job (Position No. 141) and "reclassified" that job as the Base Agent job (Position No. 150), at a lower rate of pay.

The Organization filed a claim alleging that Claimant should have been paid an additional \$5.59 per day for the monetary difference between Position Nos. 141 and 150. Further, the Organization stated that the Carrier had violated Rule 28 of the Agreement which states:

"(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."

The Division Manager declined the claim on April 27, 1990 stating that:

"A new position was established at Goldsboro, N.C. which works five days instead of six as previously. This new Agency position is properly rated and titled relating to its duties."

The Organization asserts that the Carrier violated Rule 28 of the Agreement by abolishing Transportation Service Agent, Position

No. 141, (the "Mobile Agent") and "requiring the preponderant duties to be performed on newly established Base Agent's position at a lower rate of pay." The Organization maintains that Claimant should therefor now be paid the difference between the Mobile Agent's rate, converted to a daily rate, and the rate of the new position, for a difference of \$5.59 per day.

For its part, the Carrier submits that it made

"...operational, organizational, and technological changes throughout the years to the extent that the volume of work has diminished on many positions. Many of the functions that used to be handled at outlying points have become more simplified through automation and have also been centralized. Demurrage, freight claims, waybilling and incidental billing to name a few, are duties that are no longer performed at the Goldsboro Agency. The removal of those duties, coupled with the fact that the Mobile Agent rarely left the office caused us to seek authority to eliminate the Mobile concept."

Further, the Carrier noted that Claimant did not occupy the Mobile Agent's position. Claimant was the incumbent of the Assistant Agent position that was also abolished. According to the Carrier, not only did both positions perform parallel duties, but

"...the Mobile Agent was higher rated due to a provision in the Mobile Agency Arbitration Agreement that requires the rate to be predicated on the number of stations handled."

Therefor, any dispute in the rate of pay for the Claimant must be based on the rate of the position which he occupied which was \$2,902.30. Finally, the Carrier submits that

"...a comparison between what the Claimant earned every month and his former rate of pay indicates that he has not suffered any loss in compensation."

The Board has reviewed the record and we are persuaded that the Carrier's position must prevail. In order to make out a violation of Rule 28 (a) the Organization must show a sham abolishment and reestablishment intended to reduce pay rates or evade the Agreement Rules. This does not seem to be the case. We find nothing in the record to refute the Carrier's argument that

Form 1
Page 4

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over the years, the duties of the Mobile Agent were diminished to the point that the position was no longer needed. The Carrier adhered to the steps necessary, per North Carolina Utilities Commission requirements, to abolish Position No. 141, which had virtually become a part-time job. The abolishment of Claimant's Assistant Agent position and his placement on the Base Agent job likewise appear to have been accomplished in accord with the Agreement. For the aforementioned reasons, the claim is denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Catherine Loughrin
Catherine Loughrin Interim Secretary to the Board

Dated at Chicago, Illinois, this 29th day of September 1993.