

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 30743  
Docket No. CL-30805  
95-3-92-3-630

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

(Transportation-Communications International  
( Union

PARTIES TO DISPUTE:

(Chicago, Central and Pacific Railroad Company

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood (GL-10852) that:

- (1) Carrier violated the Agreement between the Parties beginning Saturday, September 14, 1991, when it required Clerk Larry Dougherty at Cedar Rapids, Iowa, to begin performing work and duties of a higher rated position, while receiving a lower rate of pay.
- (2) Carrier shall now be required to compensate Clerk Larry Dougherty the difference between a Class III rate and that of a Class V rate, beginning Saturday, September 14, 1991, and continuing each Saturday thereafter due to a violation of Rule 4, among others of the Clerks Agreement."

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.

This dispute arose on September 14, 1991 when Carrier allegedly "required Claimant to perform the duties of a higher rated position, and continued to do so each Saturday since September 14, 1991."

Claimant is a Customer Service Representative, Pay Class III, at Cedar Rapids, Iowa. On Saturday, September 14, 1991 Claimant was working as such at the regular daily rate of \$107.52. Carrier also employed a Pay Class V, A-rated position at Cedar Rapids, with a daily rate of \$124.00. Prior to September 14, 1991, the A-rated position was a six-day position which regularly worked Saturdays along with Claimant and another Class III Customer Service Representative.

The record indicates that "due to lack of business," and, "by Agreement between the Parties," the Class V position was changed to five days per week, Monday through Friday. The Class III position continued to work on Saturday, while on Sunday the sole position at Cedar Rapids was a single Customer Service Representative. According to Carrier, the only difference between the pay classes is that a Class V position is "generally exercised in an environment on, in, or about railway equipment," whereas a Class III position is "generally exercised in an environment on or about the track structure."

On October 14, 1991, the Organization filed a claim alleging that Carrier had violated Rule 4 when it: "Required Claimant to perform the duties of the higher rated position, and continued to do so each Saturday since September 14, 1991." The Organization alleged that when Carrier assigned "certain duties of the T/A position to the Class III position," Claimant should have been compensated at the Class V rate of pay.

Carrier denied the claim, maintaining that Claimant "performed the same clerical duties, which include answering telephone calls, performing computer data input, receiving car switch orders from customers, processing car waybills, and producing miscellaneous invoices, that Pay Class III positions have performed since the inception of the Chicago Central." Carrier maintains that Claimant "performed no work on, in, or about railway equipment." Finally, Carrier argued that the Organization was "vague, at best," in citing any portion of Rule 4 that applies.

The Organization bore the burden of proving, by a preponderance of record evidence, its assertion that Carrier violated Rule 4 when it "required" Claimant to perform duties of a higher rated position and did not compensate him accordingly. The fact that Carrier previously had a Pay Class V position working with a Pay Class III position on Saturdays does not, standing alone, prove that Claimant performed any work of the higher-rated position when he worked Saturdays without the Pay Class V employee. There is no persuasive showing on this record that Claimant was required to perform duties of the higher rated position. Claimant apparently performed tasks for which he was ordinarily responsible, and the fact that the Class V position was abolished on Saturdays does not demonstrate that Claimant was then required to perform any additional tasks. Claimant has not demonstrated by a preponderance of record evidence that he was "temporarily assigned to the higher rated position," nor that there was any significant change, increase or decrease in his normal assigned duties or responsibilities on the claim dates.

AWARD

Claim denied.

O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Dated at Chicago, Illinois, this 24th day of February 1995.