

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30920
Docket No. CL-31034
95-3-92-3-905

The Third Division consisted of the regular members and in addition Referee Robert W. McAllister when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International
(Union
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(National Railroad Passenger Corporation

STATEMENT OF CLAIM: "Claim of the System Committee of the TCU (GL-10898) that:

- (a) The Carrier violated the Agreement between the parties when on Wednesday, March 30, 1991, it abolished position VER-22, Verification Clerks, hours 1:30 P.M. to 10:00 P.M., rest days Sunday and Monday, rate of pay \$99.71 per day.
- (b) Carrier shall now be required to immediately restore said position to its former job category of Verification Clerk and Claimant L. Seeney be paid a Verification Clerk rate of \$99.71 daily, additional for difference in rate between Verification Clerk rate of Timekeeper rate for each and every day worked commencing March 21, 1991 and continuing until claim is properly adjusted for correction of Carrier violation of the Agreement.
- (c) Carrier violated the Agreement between the parties when on Wednesday, March 30, 1991, it abolished position VER-23, Verification Clerk, hours 5:30 A.M. to 2:00 P.M., rest days Friday and Saturday, rate of pay \$99.71.
- (d) Carrier shall now be required to immediately restore said position to its former job category of Verification Clerk and Claimant C. Powell be paid a Verification Clerk rate of \$99.71 daily, additional for difference in rate between Verification Clerk rate and Timekeeper rate for each and every day worked commencing March 21, 1991 and continuing until claim is properly adjusted for correction of Carrier violation of the 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.

On January 26, 1989, the Carrier established Verification Clerk Positions VER-22 and VER-23 at its Fort Washington, Pennsylvania, Reservation Sales Office. Effective March 20, 1991, the Carrier abolished these two positions on which the Claimants were the incumbents. At that time, the positions paid \$99.21 per day. Concurrent with the abolishment of the Verification Clerk positions, the Carrier advertised two Timekeeper positions, which were filled by the Claimants on March 21, 1991. These positions paid \$98.00 per day.

In its claim, the Organization asserts the Carrier violated Rule 11(e)(1) of the Agreement by replacing the Verification Clerk positions with lower paid positions and requiring the same work. The Carrier agreed "... the duties required on the positions of timekeepers are the same as those previously performed by [C]laimants on VER-22 and VER-23." Rule 11(e)(1) states:

"Established positions shall not be discontinued and new ones created covering relatively the same class of work which will result in reducing the rates of pay or the avoidance of the application of these rules."

The Carrier asserts Rule 11(e)(1) is not applicable in this case because it was merely correcting an error. According to the Carrier, the Verification Clerk positions should never have been established. Although this job title is listed in the Northeast Corridor Clerical Agreement, the Carrier notes it is not among those listed in the Corporate Clerical Agreement, which is applicable to this location. It further cites Rule 11(d) of the Agreement, which reads:

"The wages for new job categories where there are no job categories of similar kind or class shall be established by collective bargaining by the parties."

The Carrier avers it abolished the Verification Clerk positions when it was learned they had been improperly bulletined. The Organization does not dispute the Carrier's statement that it had no right under the Agreement to create the job unilaterally.

On the surface, it would appear the Carrier violated Rule 11(e)(1) of the Agreement. It did abolish two positions and then created two lower rated positions to perform exactly the same work. To sustain the claim, however, would legitimize the establishment of the Verification Clerk positions, which this Board cannot do. The Organization never acquiesced to the Carrier's establishment of these positions, which might satisfy the requirement of Rule 11(d) that new positions be created only through collective bargaining. In fact, the Organization, in its Submission to this Board, wrote:

". . . First of all, Carrier established a new job category without conferring with the Organization as mandated in paragraph (d) [of Rule 11]. Paragraph (d) clearly and unequivocally requires that there be collective bargaining before establishing a job category of a similar kind or class. In the instant case Carrier established the Verification Clerk positions without agreement"

In that the claim asks the Board to direct the Carrier to restore a position that the Organization recognizes did not properly exist in the first place, we see no basis in the Agreement that would permit us to grant such relief. Accordingly, we must conclude the Agreement was not violated.

AWARD

Claim denied.

ORDER

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 8th day of June 1995.