

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32099
Docket No. CL-32498
97-3-95-3-403**

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

**(Transportation Communications International Union
PARTIES TO DISPUTE: (
(Terminal Railroad Association of St. Louis**

STATEMENT OF CLAIM:

"Claim of the System Committee of the Organization (GL-11164) that:

1.) Carrier violated the provisions of the TCU Agreement, expressly Rule 50 and any associated rules contained therein, when it unilaterally applied a rate of pay \$115.04 per day to Bulletin No. 13, dated May 4, 1994, a newly established Crew Clerk position CB76, at Madison, Illinois, which is not in conformity with rates for positions of a similar kind or class in the seniority district.

2.) As a result of such impropriety, Carrier shall now be required to compensate Crew Clerk #2 CB76, W. P. Besel, an additional \$3.84 per day, five days per week Thursday through Monday commencing Thursday, May 12, 1994, which will bring the rate of CB76 to \$118.88 and continuing until the violation 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 were given due notice of hearing thereon.

On May 11, 1994, Claimant held a Crew Clerk position identified as CB76 on the second shift, 3:00 P.M. to 11:00 P.M., Thursday through Monday, with rest days Tuesday and Wednesday.

The Organization asserts that on or about May 11, 1994, Carrier removed the duties "of doing the Track Department, B&B Department and Signal Department payroll and other various duties including but not limited to checking Boards and Log Sheets for any changes in rates and overtime, putting information on correction sheets and entering the corrections in the computer, adjusting Signal and Track Departments pay for vacation and personal days" from the position of Secretary Engineering Department, a B2 excepted and higher rated position and assigned them to Crew Clerk position CB76.

Position CB76 carries a daily rate of \$115.04. The Organization asserts that with the assignment of duties from the Engineering Department, the daily rate of the position should be increased by \$3.84 making the daily rate of position CB76 \$118.88.

The Organization's position on the rate of pay is based upon the provisions of Rule 50, reading:

**"RULE 50
NEW POSITIONS**

The rate of pay for new positions will be in conformity with the rates of pay of analogous positions (of similar kind and class) in the seniority district where created. In the event there are no analogous positions, the rate of pay of the new position will be established by negotiation between the parties signatory hereto."

The Organization points to Crew Clerk position CB70 which carries the higher rate of \$118.88 in the same seniority district, and argues that position CB76 is analogous to

position CB70 on the first shift performing the same duties, and therefore Claimant is entitled to the higher rate of pay.

The Carrier argues that duties of the B-2 excepted and higher rated position were not combined with position CB76. It asserts that the working up of payrolls by hand using pencil and paper was time consuming and is now accomplished electronically through computer technology available in the Crewboard office, all of which is part of its new Crew Management System. Further, that the small amount of additional work being performed on the second shift Crew Clerk position has historically been performed for all other crafts and classes of employees in the Crew Management System program requiring little, if any, additional effort.

The Carrier argues that this Board is without jurisdiction to adjudicate this dispute because it does not fall under Section 3 of the Railway Labor Act, as amended, from which we draw our jurisdiction, because the remedy sought is a "higher rate of pay, or new rate" of pay for Claimant which falls under Section 6 of the Act.

The Board disagrees. The claim seeks to extend an existing rate of pay to a position the Organization asserts is performing the same work as performed on a first shift position receiving the higher rate. The dispute is clearly a Section 3 dispute as the Organization seeks as a remedy a rate of pay for new position CB76 in conformity with the rate of pay of an analogous position, CB70, in the seniority district where created. Clearly the remedy sought comes under Rule 50, supra. The procedural issue raised by Carrier is without merit.

On merits, this Board finds that the issue involved in this case is for all intents and purposes, identical to that in Third Division Award 31962, in that the claim for the higher rate of pay for position CB76 is based upon the assertion that the position is analogous to position CB70, and therefore, is entitled to the same daily rate as that paid on position CB70 in accordance with the provisions of Rule 50, supra.

In Third Division Award 31962 the record revealed that the higher rate of pay paid the first shift Crew Clerk position, CB70, came about on June 1, 1986, due to the incorporation of the Mechanical Department's personnel board into the first shift crew board office. Further, the Mechanical Board continues to be marked on the first shift (CB-70).

The higher rate paid on position CB70 is paid specifically for marking the Mechanical Board. No evidence has been advanced in this Docket that position CB76 performs work of marking the Mechanical Board. Accordingly, the Board finds that the duties performed on position CB76 are not analogous to the duties performed on position CB70. Rule 50 does not support the claim and it will be denied.

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 9th day of July 1997.