

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 33391
Docket No. CL-35085
99-3-98-3-833**

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

(Transportation Communications International Union
PARTIES TO DISPUTE: (
(CSX Transportation, Inc. (former Chesapeake and
(Ohio Railway Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Organization (GL-12208) that:

(a) The Carrier violated the terms of the Clerks’ General Agreement, primarily Rules 23 and 44, when it arbitrarily and unilaterally reduced the rates of pay on Yard Clerk/Messenger positions (Position Nos. 4F91-105, 4F91-205, 4F91-305) by abolishing said positions effective with the close of business on January 5, 1996, and concurrently therewith established positions titled Messenger/Checker (Position Nos. 4F91-108, 4F91-209 and 4F91-308) to perform relative the same work at a lower rate of pay, and

(b) The Carrier shall now restore the Yard Clerk/Messenger positions as they were prior to January 5, 1996, and make Claimants P.W. Mundy, P.R. Smith and/or M.J. Burnett, their reliefs, substitutes and/or successors, whole for the time and earnings lost beginning on January 5, 1996, and continuing until this matter is settled.”

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 January 5, 1996, the Carrier abolished three Yard Clerk/Messenger positions at Acca Yard in Richmond, Virginia. Effective January 6 the Carrier established three Messenger/Checker positions at the same location with a lower rate of pay.

The Organization filed a claim charging the Carrier with violating Rule 44, which reads:

"When there is a sufficient increase or decrease in the duties and responsibilities of a position or change in the character of service required, the compensation for that position will be properly adjusted by negotiation with the General Chairman or his duly authorized representative, but established positions will not be discontinued and new ones created under the same or different titles covering relatively the same class or grade or work, which will have the effect of reducing the rate of pay or evading the application of these rules."

Following investigation of the matter, the Carrier responded to the claim stating that while it had intended to transfer all data input work to Jacksonville, Florida, in March 1994, some two years earlier, it discovered that new Position No. 4F91-308 was still performing data input work. Accordingly, the Yard Clerk/Messenger rate of pay was reestablished for that one position.

The Organization further argues that the Carrier slept on its right to reduce the rate of pay when it waited those two years to take the action it finally took.

The Carrier argues it properly changed the two positions. It points out that there was a decrease in the level of duties to that of a Messenger/Checker for which there was an established rate.

The Organization does not dispute that the data input work no longer is being done by the two remaining lower rated Messenger/Checker positions. Therefore it must prove that the rate established for the Messenger/Clerk was not the proper rate. However, it does not argue that the work being performed is not befitting of that title. It just wants the higher rate put back on the two jobs.

Despite the skillful arguments of the Organization, it failed to prove that the Carrier violated the Agreement. While the Carrier might have been late in making the change, it was, nevertheless, a proper action. 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 13th day of July 1999.