

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 33423
Docket No. CL-34174
99-3-97-3-705**

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

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

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood (GL-11858) that:

Claim No. 1 - (TCU file: 277-951, Carrier file: 93-1008)

- (a) The Carrier violated the terms of the Clerks’ General Agreement, particularly Rule 23, when it failed and refused to give thirty (30) days’ advance written notice to the General Chairman regarding the consolidation and reorganization of the Stores Department and the Freight Car Repair Department at Clifton Forge, Virginia, on July 2, 1993; and**
- (b) The Carrier violated the terms of the Clerks’ General Agreement, particularly Rule 47 (b), when it failed and refused to advise the District Chairman the nature and disposition of the remaining duties of Section Storekeeper, Position No. 017N-105, prior to when said position was abolished effective with the close of business on July 1, 1993; and**
- (c) The Carrier violated the terms of the Clerks’ General Agreement, particularly Rule 1, when it transferred the assigned work of abolished Storekeeper Position No. 017N-105, to an employee or employees not covered by the scope of said Agreement; and**
- (d) The Carrier shall restore Position 017N-105, return the work thereof and Claimant Hardy to the restored position until the**

nature and disposition of its remaining duties can be jointly determined by the parties; and

- (e) The Carrier shall pay Mr. J. H. Hardy the rate of Position 017N-105 for each day, in addition to other earnings, beginning on July 2, 1993 and continuing until this matter is settled.

Claim No. 2 - (TCU file: 277-953, Carrier file: 93-1010)

- (a) The Carrier violated the terms of the Clerks' Agreement, particularly Rules 23 and 45, when on or about July 2, 1993, certain duties of Section Storekeeper, Position 017N-105, Stores Department, were transferred to and consolidated with the duties of AAR Clerk, Position 3G04-104, Freight Car Repair Department; and
- (b) The Carrier shall now properly adjust by negotiation with the Organization the rate of compensation for AAR Clerk, Position 3G04-104, beginning on July 2, 1993 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.

The combined claims both refer to and flow from the Carrier's action in Bulletin No. 31, that abolished the position of Claimant J. H. Hardy, who was the regularly

assigned Section Storekeeper in the Materials Department at Clifton Forge, Virginia, effective July 1, 1993. On June 15, 1993, the Organization requested without response that the Carrier indicate the disposition of the Claimant's remaining duties.

The Organization thereafter filed claim on August 13, 1993, alleging that the Carrier (1) violated the notice provision of the Agreement, Rule 23, when it consolidated and reorganized the Stores and Freight Car Departments; (2) violated Rule 47(b) when it refused to discuss the disposition of the remaining duties; (3) violated the Scope of the Agreement when it allowed employees foreign to the Agreement to perform the Claimant's work and, therefore, as set forth in Claim No. 1, should return Claimant Hardy to his position, pay him for lost earnings and properly discuss with the Organization the disputed actions. The Organization further alleges that Rules 23 and 45 were violated when the Claimant's duties were transferred to and consolidated with the duties of the AAR Clerk in the Freight Car Repair Department and in Claim No. 2 and it seeks a new rate of pay to be negotiated for that position.

At the outset of Claim No. 1, the Board notes that the purpose of the claim is to return J. H. Hardy to his reestablished Storekeeper position. There is no reason for the Board to get into the details of its logic or its inability to provide injunctive relief as the Carrier rightfully points to the Claimant's Resignation Agreement signed on March 17, 1995. That resignation releases the Carrier from any and all claims. There is no need for a recitation on the long established principle that the resignation removes Claimant Hardy's rights for return and pay from the Board and makes Claim No. 1 moot.

As for Claim No. 2, the central issue for decision is whether the Carrier abolished the Storekeeper position with a daily rate of \$115.70 and then assigned the work to a lower rated position with a daily rate of \$113.25. It is basic to this dispute that the Organization provide proof by evidence that specific higher rated work exclusively reserved to the Storekeeper position was transferred to the AAR Clerk or elsewhere. We do not find such proof in the record, nor evidence to convince the Board that the AAR Clerk's job changed accordingly. The Organization has not proven to our satisfaction that work exclusively reserved was transferred requiring the application of Rules such as Rule 47 (b), among others, requiring advance notice or rate negotiations. As such, Claim No. 2 must be denied.

AWARD

Claim No. 1 is dismissed.

Claim No. 2 is 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.