Award No. 10431

Docket No. TE-8612

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Wesley Miller, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Chicago, Milwaukee, St. Paul and Pacific Railroad that:

1. The Carrier violated the agreement between the parties when, effective May 1, 1954, it declared Position No. 400, Passenger and Ticket Agent's position Cedar Rapids, Iowa, abolished and improperly reclassified the position as Operator.

2. The Carrier further violated the agreement when it unilaterally combined the position of Ticket Agent with that of Operator and reduced the rate of pay of the incumbent, Mr. B. P. Dvorak, from $417.29 per month as specified in the wage scale, to an arbitrary rate of $1.9997 per hour.

3. The Carrier shall now be required to pay claimant B. P. Dvorak the difference between what he would have earned since May 1, 1954 at his proper monthly rate of $417.29 and what he has been paid on an hourly basis of $1.9997.

EMPLOYES' STATEMENT OF FACTS: The agreement between the parties bears the effective date of September 1, 1949, a copy of which is available to the Board. Rule 27 — Wage Scale — of the Agreement lists the positions of Ticket Agent and Operators at Cedar Rapids as per the following:

"*Cedar Rapids 'Tkt'	T A	$355.73 (per mo.)
	1st O	1.65 (hourly)
	2nd O	1.59 "
	3rd O	1.57 "

Claimant was the duly assigned incumbent of the Ticket Agent's position at Cedar Rapids when, on April 20, 1954, he was notified by Carrier's Superintendent K. R. Schwartz as follows:

"Effective May 1st, Position No. 400, Passenger and Ticket Agent's position Cedar Rapids, Iowa is abolished. You will arrange to be governed accordingly."

It is the carrier's position that the reduction in force at Cedar Rapids on May 1, 1954 was in conformity with agreement provisions and the claim should, therefore, be denied.

OPINION OF BOARD: Although the issues of this Claim are permeated with complexities, we believe that disposition of the matter is governed by Rule 3 (e) of the applicable Agreement of the parties, which reads in pertinent part as follows:

> "In event of reduction in force at any office, the last trick will be considered abolished, the remaining men to be moved back on tricks, **retaining their rates of pay. . .**" (Emphasis ours.)

Admittedly, a reduction in force was effected at the particular office at Cedar Rapids, Iowa, and it applied to agreement covered employes.

In the instance at hand, one of the men "moved back" was a monthly rated employe. His minimum salary was in the contract negotiated amount of $417.29 per month; his regular rest day was Sunday; and he could be worked on Saturday without additional pay. On the other hand, he was entitled to $417.29 per month whether he worked on Saturday or not, e.g., a year could elapse without his performing any work on any Saturday and his monthly rate of pay would not be reduced.

In this Claim, when the monthly rated employe was moved back, he did not retain his minimum monthly rate of pay of $417.29 but, in lieu of it, was paid under a formula derived at by dividing the monthly rate by 208⅔ hours (the number of hours comprehended in reference to the job as provided in Section 3 of Rule 11 of the Agreement), and then calculating payment in reference to a five day work week. This resulted in a loss to grievant of over $50.00 per month.

Carrier's justification of this action is not devoid of logic; the reasons given are almost persuasive; but we believe that the net result of the action was a violation of Rule 3 (e).

Monthly rated employes are in a distinct category. They are designated specifically and separately in the Index of the Agreement, and they are not excepted from the benefits conferred by Rule 3 (e).

The record reveals that the argument of the Organization which most impresses us was presented on the property.

We cannot sustain Carrier's contention that this Claim is barred under Section 2, Article V of the August 21, 1954 Agreement, or that it should be denied on a laches theory (Award 10075, Webster, Referee).

We do find that the time period involved in the Claim existed only from May 1, 1954 to August 10, 1954.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Carrier violated the Agreement to the extent shown and indicated above.

AWARD

The claim is disposed of in accordance with the Opinion and Findings. The Carrier is directed to pay the claimant the difference between what he would have earned under the negotiated monthly rate and the amount paid him under Carrier's formula for the time period above shown.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 21st day of March 1962.