Award No. 11559

Docket No. CL-11320

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David Dolnick, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the terms of the currently effective Agreement between the parties when on or about August 7, 1958, it abolished position in the St. Louis Terminal designated as Yard Clerk-Messenger, Position No. 59, rate of pay effective May 1, 1958, $17.74 per day, and coincident therewith established a Messenger Position No. 63 with exactly the same duties at a rate of $15.52 per day.

(2) J. A. Kleckner and his successors as occupants of Messenger Position No. 63, now be reimbursed for the difference between the rate of the Messenger Position ($15.22 per day) and the rate of the former Yard Clerk-Messenger Position ($17.74 per day), from August 8, 1958 until corrected.

EMPLOYES' STATEMENT OF FACTS: Prior to April 23, 1958, the yard clerical force in the St. Louis Terminal included:

Messenger Position No. 31, 9:00 A.M. to 6:00 P.M., with Headquarters in the Lindenwood Yard Office,

General Clerk Position No. 55, 2:00 P.M. to 10:00 P.M., with Headquarters at the Chouteau Avenue Yard Office.

As a result of Award 8024, the checking of yards in the Cheltenham district of the St. Louis Terminal had been assigned to General Clerk Position No. 55 with Headquarters at Chouteau Avenue. Effective at the close of work on April 24 Position No. 55 was abolished. See Employes' Exhibit 1(a). Also, at the close of work on April 23 Messenger Position No. 31 was abolished. See Employes' Exhibit 1(b). On April 23 a new position designated as Yard Clerk-Messenger Position No. 59 was established to which was attached a part of the duties of former Messenger Position No. 31, and that part of the duties of Position No. 55 which included the checking of yards in the Cheltenham district. See Employes' Exhibit 1(c). Correct rate effective May 1, 1958, was $17.74 per day.

effective May 1, 1958. If Carrier had abolished only Position No. 55 and retained Position No. 31, on the basis of the facts in the record, we would be obliged to hold that Carrier violated Rule 60 because the employe continued to perform relatively the same work and he would be entitled to the higher rate.

Similarly, had Carrier abolished both Position No. 31 and Position No. 55 and established a new position similar in description to Position No. 59, but called it Yard Clerk Position 59 and subsequently abolished that position because of an alleged error as contended here, we would also hold that Rule 60 applies. The mere fact that Position No. 59 was Yard Clerk-Messenger does not alter our position. Employes' letter of June 6, 1958 while correctly quoting Rule 2 does not protest the rate. It only calls Carrier's attention to the fact that Group 1 and Group 2 positions may not be bulletined as one position.

On the basis of all the facts in the record, we conclude that Carrier violated Rule 60.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 Carrier violated the Agreement.

AWARD

Claim is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois this 28th day of June 1963.

CARRIER MEMBERS' DISSENT TO AWARD NO. 11559,
DOCKET NO. CL-11320

Award 11559 is palpably wrong in sustaining a claim covering a change which was made by agreement of the parties. The record shows that, when Carrier abolished Yard Clerk Position 55 and Messenger Position 31, it posted Bulletin No. 30 covering new position 59, Yard Clerk-Messenger. In respect thereof, Petitioner states:

> "Protest was made regarding this bulletin on the basis that it included two separate and distinct classes of work described in the Scope Rule as Group 1 and Group 2 Positions, leaving a question as to

whether or not the position was actually a Group 1 Position or a Group 2 Position, although the rate of pay attached to the position was the established rate of pay for the checking of yards, which is Group 1 work. * * *"

In his letter of protest, the General Chairman contended as follows:

"Bulletin No. 30 dated April 23, 1958 shows title of position of Yard Clerk-Messenger. Yard Clerks are Group 1 employes and Messengers are specifically named in Group 2. * * * If the position has four hours or more of clerical work, it is a Group 1 position and should be so bulletined. If it is primarily a Messenger position, it should be bulletined to Group 2 employes. * * *"

In reply Carrier agreed therewith as follows:

"I am in accord with your position in this respect as this is in line with Rule 2 of the Clerks' Agreement and in line with practice which has been followed on this property for many years. Therefore, I am advising Mr. Mitchell, by copy of this letter, to review the work assigned to the position covered in Bulletin No. 30. If the work assigned to such position is preponderantly clerical work, am asking Mr. Mitchell to eliminate, by notice, the word 'Messenger' from the title of the position covered by Bulletin No. 30. Since the position was previously bulletined as a Group 1 clerical position, I do not consider that it would be necessary to rebulletin such position in order to accomplish the elimination of the word 'Messenger' used in such bulletin. If the work assigned to such position is preponderantly Group 2 work, Mr. Mitchell should abolish the position established by Bulletin No. 30 and issue a new bulletin covering the position which is to be established according to preponderance of work on such position.

* * *"

According to the record, therefore, Petitioner brought about this change by its own act of questioning the propriety of the classification of Position 59 in the first place. Obviously, an improper classification of a position cannot fix the rate of pay thereof. Under the rules, preponderance of work determines the proper classification, as admitted by Petitioner. Hence, it also determines the rate of pay; see Award 19 of Special Board of Adjustment No. 194, involving the same parties, agreement and rules as in the instant case.

The majority's confusion concerning the application of Rule 60 is manifest by its conclusion concerning its hypothetical citation as follows:

"* * * If Carrier had abolished only Position No. 55 and retained Position No. 31, on the basis of the facts in the record, we would be obliged to hold that Carrier violated Rule 60 because the employe continued to perform relatively the same work and he would be entitled to the higher rate."

Obviously, Rule 60 would not be applicable thereto inasmuch as no new position would be created; in addition, continuing "to perform relatively the same work" thereafter would not entitle the incumbent of Position 31 to the higher rate.

For the foregoing reasons, among others, we dissent.

W. H. Castle

P. C. Carter

D. S. Dugan

T. F. Strunck

G. C. White

LABOR MEMBER'S ANSWER TO CARRIER MEMBERS' DISSENT TO AWARD NO. 11559, DOCKET NO. CL-11320

The Carrier Members' Dissent is merely a reiteration of arguments presented to the Referee in panel discussion and rejected by the majority as without merit. There was no agreement between the parties that Carrier was privileged to discontinue an established position and create another in lieu thereof under a different title covering relatively the same class of work for the purpose of reducing the rate of pay in violation of Rule 60, which was the case here.

Award No. 11559 properly determined the issue before the Board, regardless of the Dissenters' untenable and irrelevant arguments to the contrary.

J. B. Haines