Award No. 14966
Docket No. CL-15497

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Arthur W. Devine, Referee

PARTIES TO DISPUTE:

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

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5737) that:

1. Carrier violated the Clerks' Rules Agreement at Portage, Wisconsin, when it combined duties of an established position with that of a new position, thereby establishing a new position which is not similar in kind or class to any other position in District No. 37, and unilaterally established a rate of pay for such position.

2. Carrier shall reclassify the position of Warehouse Foreman at Portage, Wisconsin to Mail Foreman, and apply thereto a rate of pay of $20.8224 per day, which is comparable to other positions of Mail Foreman on the railroad.

3. Carrier shall be required to compensate employe E. E. Nitz, his successor or successors, the difference between the Warehouse Foreman rate of $19.538 per day and a Mail Foreman rate of $20.8224 per day, for each work day retroactive 60 days from date of this claim and for each day thereafter that the violation continues.

EMPLOYES' STATEMENT OF FACTS: In a letter dated June 27, 1963, Mr. S. W. Amour, Assistant to Vice President, advised the General Chairman of the Clerks' Organization of a new program instituted by the Postal Department in connection with the handling of mail whereby Portage, Wisconsin would be the designated centralized point for mail handling activities rather than New Lisbon, Wisconsin which was previously the designated centralized point for such mail handling actiivties; this change in program to be effective July 1, 1963. Copy of Mr. Amour's letter of June 27, 1963 is submitted as Employes' Exhibit A.

On June 22, 1963, Bulletin No. 21 was issued by Superintendent F. H. Ryan, abolishing the following positions at New Lisbon, Wisconsin in District 37:

Clerk Position No. 4112
Mail Handler Position Nos. 4113, 4114, 4382 and 4383
Baggageman Position No. 4100

mail handling activities for said specified area in the State of Wisconsin thereby eliminating the mail handling activities at New Lisbon which, in turn, necessitated the abolishment of Carrier's mail handling force at New Lisbon and the concurrent establishment of a mail handling force at Portage.

It so happened that there was already in existence a warehouse foreman position (Position No. 4095) at Portage, the occupant of which, prior to July 1, 1963, supervised and assisted in the handling of LCL freight, in addition to other duties, therefore, even though supervision of the mail handling force at New Lisbon was not necessary and/or provided, it was felt that so long as there was already in existence at Portage a foreman who performed supervisory and manual duties in connection with LCL freight he could and should be utilized to perform those same duties in connection with the mail and this was done merely by changing his assigned hours from 1:00 P. M. to 9:00 P. M. to 9:00 P. M. to 5:00 A. M.

As it is necessary to rebulletin positions when there is a change in assigned hours such as that involved here, Warehouse Foreman Position No. 4095 was rebulletined for that reason (change in assigned hours) on June 22, 1963 and Claimant Nitz was awarded the position as a result of being the senior qualified applicant therefore.

Attached hereto as Carrier's Exhibits are copies of the following letters:

Carrier's Exhibit A — Letter written by Mr. S. W. Amour, Assistant to Vice President, to Mr. H. V. Gilligan, General Chairman, under date of August 18, 1964.

Carrier's Exhibit B — Letter written by Mr. Amour to Mr. Gilligan under date of September 1, 1964.

Carrier's Exhibit C — Letter written by Mr. Amour to Mr. Gilligan under date of January 15, 1965.

(Exhibits not reproduced.)

OPINION OF BOARD: Carrier's contention that the claim in behalf of the named Claimant's "successor or successors" is improper under Article V.

AWARD 14088

"The National Disputes Committee rules that Claimants have been identified on the record both by name and as the incumbents of certain positions, and that inasmuch as the term 'successors' as used in the claim refers to the successors of the named claimants as the incumbents of certain positions it adequately identifies additional claimants even though it does not specifically name them."

The part of the claim on behalf of successors, as referring to successors is not barred by Article V of the August 21, 1954 Agreement. Therefore, we will overrule the Carrier in that part of the Claim.

In this case the Organization contends that a change in duties on Position No. 4095 constituted it as a new position which was required to be bulletined in accordance with Rule 9 and rated in accordance with Rule 18.

Nothing in the parties' Agreement specifies that a change in duties on a position constitutes a new position.

Award 13719, same parties.

Even if we were to consider the positions as a new one for purposes of Rule 18 the claim cannot be sustained.

The rate here claimed admittedly based on the rate paid a position in another seniority district is not in conformity with Rule 18.

> ". . . Numerous awards of this Board have held that we are without authority to reclassify positions or order a change in the rate of pay. Such matters are properly the subject for negotiations."

(Award 9307.)

Therefore, we will deny the Claim.

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 the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of November 1966.

LABOR MEMBER'S DISSENT TO AWARD 14966, DOCKET CL-15497

The conclusion and interpretation of the Rules relied on in Award 14966, Docket CL-15497, is in error and does not reflect a proper consideration of the dispute that was submitted.

Especially is the above statement true with regard to the Referee's statement that:

"Nothing in the parties' Agreement specifies that a change in duties on a position constitutes a new position."

The facts are that the Employes relied not only on the fact that the duties were so drastically changed as to constitute a new position but also on the fact that Rule 14(b) specifically states that, under the agreed circumstances in this case, ". . . the position will be considered a new one . . ." and Rule 18 specifically requires that ". . . In the absence of a similar position in the district, the rate of pay for the new position will be established by agreement between the Carrier and the General Chairman . . ."

The latter requirement simply was not met and the least the Referee should have done was to acknowledge the obvious fact that a violation did occur. For example, see Award 15058 where, in a like dispute between the same parties, the Referee there found that Carrier ". . . failed and refused to establish the rate of pay by agreement in the manner prescribed in Rule 18; **a fortiori** Carrier violated the Agreement . . ."

The same factual situation existed in the instant case and the proper remedy would be a requirement that:

1. The rate of pay be reached by agreement.

2. That rate be effective from the time the unilateral rate was illegally established.

3. That Claimant, his successor or successors, whomever occupied the position, be allowed any difference between the unilaterally established rate and the negotiated rate, unless otherwise settled in the required negotiations.

Most certainly the Referee here should neither have ignored nor tacitly approved the plainly evident violation of the clear and unambiguous Rules involved. The Referee obviously should have required that the Agreement the parties had made be honored. Anything less is entirely wrong.

I therefore dissent to this erroneous Award.

D. E. Watkins
Labor Member
12-22-66

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