

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20339  
Docket Number TE-20332

Irwin M. Lieberman, Referee

(Brotherhood of Railway, Airline and Steamship  
( Clerks, Freight Handlers, Express and  
( Station Employees  
( (formerly Transportation-Communication Division, BRAC)  
PARTIES TO DISPUTE: (  
(Soo Line Railroad Company

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Division, BRAC, on the Soo Line Railroad, TC-5873, that:

1. Carrier violated Rules 1, 2, 7, 8 and 30 of the Agreement between the parties when on August 28, 1972 it removed the Official Agency at Ashland, Wisconsin from Rule 7 and consolidated it with the First Trick Operator position covering the consolidated position by Rule 30 of the Agreement, without agreement with the representatives of the employees, as provided in Rule 8 of the Agreement.

2. Carrier shall now compensate the incumbent of the consolidated positions at Ashland, Wisconsin, Mr. A. A. Utegaard or his successors, commencing on August 28, 1972, the highest rate of pay of the two (2) positions consolidated, plus 11.5¢ per hour for as long as the two (2) positions remain consolidated instead of \$4.5913 per hour, the rate arbitrarily set by the Carrier. The highest rate being that of the Official position.

OPINION OF BOARD: The dispute herein involves the discontinuance of the Official Agent's position at Ashland, Wisconsin and the subsequent reclassification of the first trick Operator's position to Agent-Operator.

Part 1 of the claim deals with the alleged "consolidation" of the Official Agent's position with the First Trick Operator's position without agreement of the Organization. It is evident that the Official Agent's position is a supervisory classification outside the purview of the Railway Labor Act and also not within the scope of the Agreement. The Carrier correctly stated that it has the unilateral right to establish or abolish such positions as well as to determine rates of pay and working conditions for such positions without the participation of the Organization. Although many Organizations in this industry provide for promotion to supervisory positions from seniority rosters, as in Rule 7 (e) herein, such understandings do not place exempt supervisory positions under the Agreement. In any event the Board has no authority to consider issues with respect to Official positions.

Part 2 of the claim deals with the rate of pay for the position of Agent-Operator established at Ashland. It is well known and accepted that this Board has no jurisdiction over negotiable issues; in particular the Board has no authority to establish a rate of pay. The establishment of rates of pay must be determined through negotiation and if required through mediation procedures contained in Section 6 of the Railway Labor Act, as amended.

Based on the reasoning above, we are compelled to dismiss the claim without consideration of the issues raised or the merits of the dispute.

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

That the Board does not have jurisdiction over this dispute.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

A.W. Parker  
Executive Secretary

Dated at Chicago, Illinois, this 31st day of July, 1974.