

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20478  
Docket Number CL-20395

David P. Twomey, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship  
( Clerks, Freight Handlers, Express and  
( Station Employees  
(  
(San Diego and Arizona Eastern Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood  
(GL-7375) that:

(a) The San Diego & Arizona Eastern Railway Company violated the Clerks' Agreement on August 2, 1971 and daily thereafter when it failed and refused to compensate employees Mike Wright, Morris Kohl and Paul Fuchs at rate of Crew Dispatcher when performing such work, and;

(b) The San Diego & Arizona Eastern Railway Company shall now be required to compensate employees Wright, Kohl and Fuchs the difference in rate of pay between Train Clerk and Crew Dispatcher (\$1.09 per day) in addition to other earnings, beginning August 2, 1971 and continuing until settlement is made.

OPINION OF BOARD: The Claimants occupy the position of Train Clerk in the San Diego yards of the SDAE Ry. The Employees contend that the assignment of work by the Carrier's Superintendent Harral as per his letter of July 9, 1971 was work which was exclusively attached to Crew Dispatchers position. The Employees contend that Rules 3, 4, 5, and 6 of the Agreement were violated when the Carrier assigned these duties and then failed to pay the Crew Dispatcher's rate.

The Carrier contends that the Train Clerks' contentions are without merit and lacking in Agreement support.

The pertinent provision of the Agreement is as follows:

"Rule 6 - PRESERVATION OF RATES

(a) Employees temporarily or permanently assigned to higher rated positions shall receive the higher rate for the full day while occupying such positions; employees temporarily assigned to lower rated positions shall not have their rates reduced. The foregoing includes time worked beyond limits of assignment or on rest days while occupying positions referred to herein.

"(b) A 'temporary assignment' contemplates the fulfillment of the duties of the position during the time occupied, whether the regular occupant of the position is absent or whether the temporary occupant does the work, irrespective of the presence of the regular employee. Assisting a higher rated employee due to a temporary increase in the volume of work does not constitute a temporary assignment."

The Carrier's Superintendent's letter of July 9, 1971 deals with procedures for Train Clerks for the handling of a written bump by a senior yardman. There are nine yardmen on the yard board and two yard assignments operating regularly on a daily basis. Superintendent Harral, in Employee Exhibit A, claimed that the work in question amounted to "not more than 15 minutes a day." Local Chairman Hemphill denied that the work in question "takes no more than 15 minutes per day": Employee Exhibit B. Claimant Wright stated that, "On my 2 to 10 PM shift time spent crew dispatching will vary anywhere from 5 minutes to as much as 30 minutes": Employee Exhibit E.

Carrier contends on RP-28 and this is not denied, that Claimants spend little time handling displacement notices and that "The main time consuming item mentioned by Petitioner in this claim is crew calling work which claimants have always done...." Claimant Kohl, in Employee Exhibit F states "I use to call only one yard crew until the on duty time of job 500 was changed and I now call a road crew which use to be the duty of the crew dispatcher." It is evident that the work in question is not dissimilar to the Claimants' normal duties.

It is well settled that an employee assigned to a higher rated position need not fulfill all the duties of the higher rated position in order to qualify for the higher pay: see Awards 14681, 12088, 11981, 9842, 6965, 4669. It is equally well settled that there must be substantial fulfillment of the position or work in order for a Claimant to collect the higher rate of pay: see Awards 16828, 16536, 15629, 14490, 10912. The record is clear that the Employees have failed to sustain their burden of proof that the Claimants substantially fulfilled the Crew Dispatcher's position requiring the higher rate of pay. Further, the Employees have failed to sustain their burden of proof that work in question was in fact higher rated work. The Claim will be denied.

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

That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

A. W. Pauls  
Executive Secretary

Dated at Chicago, Illinois, this 25th day of October 1974.

LABOR MEMBER'S DISSENT  
TO AWARD 20478 (Docket CL-20395)  
(Referee Twomey)

Award 20478 recognizes that it is well settled that employees assigned higher-rated work need not fulfill all of the duties of the higher-rated position in order to qualify for the higher rate of pay. After stating this recognition, the Award should have concluded that the Agreement was violated and that the claim should be sustained. Instead, the majority sought escape from its obligation by improperly holding that the Employees had failed to sustain their burden of proof that Claimants were required to perform Crew Dispatchers' functions.

The proof argument is silly. The whole dispute arose as the result of Carrier's July 9, 1971 assignment notice to Claimants that they were to commence performing certain Crew Dispatcher functions during their tours of duty as Train Clerks. No further evidence requirements were needed, as the uncontested facts demonstrate that Train Clerks, subsequent to July 9, 1971, had Crew Dispatcher responsibilities placed on their Train Clerk assignments.

It is unfortunate that this Board would condone the transfer of higher-rated duties to lower-rated positions without requiring a correct application of the pay rules of the Agreement. Award 20478 is in palpable error and requires dissent.

  
J. C. FLETCHER  
12-5-74