

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20558
Docket Number CL-20550

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship
(Clerks, Freight Handlers, Express and
(Station Employees
(
(Norfolk and Western Railway Company
((Lake Region)

STATEMENT OF CLAIM: Claim of System Board of Adjustment No. 218
(GL-7438) on the Lake Region, Norfolk and Western
Railway Company, that:

1. Carrier violated the February 25, 1971 Agreement when on October 15, 1971, they abolished the position of Cashier-Clerk at Charleston, Illinois, held by Mr. A. J. Simpson, and on October 18, 1971, declined his request for separation pay.

2. Carrier shall now pay Mr. Simpson the six (6) months separation pay which he was entitled to.

OPINION OF BOARD: The significant events in this matter are not in dispute. Claimant entered the Carrier's employ on June 5, 1969 and on August 10, 1970 he exercised his seniority to the position of Cashier-Clerk in the Freight Office, Charleston, Illinois, which position he held at the time this claim arose. On September 24, 1971 Carrier served notice on the Organization of its intention to combine seniority rosters of Clerks and Telegraphers as provided by Article VIII of the February 25, 1971 National Agreement. On October 8, 1971 the Carrier abolished the position of Cashier-Clerk held by Claimant at Charleston, Illinois effective October 16, 1971 and combined the work with that of the Agent-Operator. On October 11, 1971 Claimant wrote to the Carrier tendering his resignation and requesting severance pay provided by the National Agreement. Effective April 1, 1973 the seniority rosters were combined. Carrier rejected Claimant's request for severance pay.

Petitioner contends that Article VIII Section 9 of the National Agreement of February 25, 1971 is particularly relevant to this dispute. That section reads:

"If a Carrier combines work and/or functions performed by clerks and telegraphers prior to the date seniority

"rosters are combined, with the purpose or effect of depriving an employee of benefits provided for under Sections 6 and 7 of this Article, the benefits of Sections 6 and 7 of this Article shall apply to the employee as of the date when he is affected by such combination, provided seniority rosters are combined under this Article VIII."

The Organization argues that Claimant had to resign in order to request the separation allowance. Furthermore Carrier's actions clearly fit all the requisite conditions of Section 9, according to Petitioner, in that the work of the two crafts was combined, the combination had the effect of depriving Claimant of benefits provided for in the Agreement, and subsequently the seniority rosters were combined.

Carrier's position is that the position was abolished solely because of insufficient work at Charleston and the subsequent transfer of the work to the Agent-Telegrapher was not accomplished for the purpose of depriving Claimant of the benefits provided by the Agreement. In its submission, for the first time, Carrier presented data which indicated a decline in business from 1968 to 1971. Carrier further argues that had it waited until after April 1, 1973 to abolish the position, Claimant would not have been entitled to severance pay since at that time there were 18 positions in the seniority district held by employees junior to Claimant.

At the outset we note that it was improper for Carrier to introduce factual material with its submission which had not been made part of the record on the property; this rule of the Board is well established and needs no documentation. We must comment, however, that the data in question shows that for the year 1970, when Claimant entered the position involved, an average of twenty five cars per month were being handled at the Charleston freight station; for the first eight months of 1971 an average of thirty cars per month were handled. It is clear that Carrier has in no way substantiated (on the property) its alleged decline in business activity at Charleston.

Carrier's further argument with respect to the positions which were available to Claimant in 1973 is not convincing, or in our judgement applicable to this claim. Section 9 quoted above provides that the protective benefits are applicable as of the date affected, not as of the date the rosters are combined. Even though we can accept, arguendo, Carrier's purpose in abolishing Claimant's position, we fail to see how this action could have any other effect than to deprive him of the benefits provided in Sections 6 and 7 of Article VIII of the Agreement. For this reason the claim must be sustained.

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 violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulsen
Executive Secretary

Dated at Chicago, Illinois, this 13th day of December 1974.