

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20573
Docket Number CL-20612

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship
(Clerks, Freight Handlers, Express and
(Station Employees
(
(The Chicago River and Indiana Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-7492) that:

(a) The Carrier violated the Rules Agreement, effective December 1, 1949 and reprinted January 1958, particularly Rules 17 (b) and 18, when Car Control Clerk, Position No. 26, Chicago, Illinois, rate \$39.519, was abolished with close of tour of duty, Friday, December 15, 1972, and Yard Clerk, Position No. 6, rate \$36.659 was established effective the following work day, Monday, December 18, 1972.

(b) Clerk R. C. Battle be allowed the difference between these rates of pay, or \$2.86, for December 18, 19, 20, 21, 22, 25, 26, 27, 1972 - eight days; Clerk J. R. Sedlacek for December 28, 29, 1972, January 3, 4, 5, 1973 - five days.

(c) Clerk C. A. Walsh be allowed the difference between these rates of pay, or \$2.86 for each day he worked Position No. 6, beginning with January 8, 1973, and continuing until adjusted. (Case 2/73)

OPINION OF BOARD: The Claims in the dispute involve the abolition of Position No. 26, Car Control Clerk and the simultaneous establishment of a new position, Yard Clerk, Position No. 6 on December 18, 1972. The Organization contends that this action violated the Rules, particularly Rules 17 (b) and 18; those Rules provide:

"Rule 17

RATING POSITIONS

* * * * *

(b) The rates for new positions shall be negotiated by the parties to this agreement and shall be in conformity with the rates for positions of similar kind or class in the seniority district where created.

* * * * *

"Rule 18

PRESERVATION OF RATES

Established positions shall not be discontinued and new ones created under a different title covering relatively the same class of work for the purpose of reducing the rate of pay or evading the application of these rules."

The crux of Petitioner's rationale in this dispute is that the new position was substantially the same as the abolished position. Petitioner stated: ".... the same clerical employe, R. C. Battle, continued to work at the same location performing approximately the same duties, in fact about seventy-five percent the same as he had performed previously". Further, it is argued that the rate for Position No. 6 was unilaterally determined and established by the Carrier.

Carrier asserts that the rate for all Yard Clerk positions (including No. 6) were identical in the seniority district and that it had "negotiated" with the Organization with respect to Position No. 6. More important, Carrier asserts that Position No. 26 was paid a higher rate because that job entailed work on the Demurrage and Industrial Car Control System, which included IBM machine work whereas Position No. 6 did not include such work. Carrier states that the two positions were at different locations, contrary to the claim of Petitioner.

We note that the record of this dispute on the property is totally devoid of any evidence, beyond assertion, in support of Petitioner's position. We find nothing to support the basic claim that the two positions were substantially the same. "Mere repetition of the basic allegation does not convert it into an established fact" (Award 20217). It is obvious that facts are the essential ingredients in perfecting cases of this nature; their omission precludes any finding of contract violations (See Awards 19725, 20232, 20231 and many others).

The record of this dispute contains argument and counter argument on procedural issues raised by Carrier. In view of our disposition of the dispute, we do not find it necessary to deal with the procedural question.

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:


Executive Secretary

Dated at Chicago, Illinois, this 30th day of December 1974.