NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 20722
THIRD DIVISION Docket Number SG-20481

Dana E. Eischen, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Chicago and North Western Transportation Company

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Chicago and North Western Transportation Company that:

(a) On or about February 4, 1972, the Carrier violated the current Signalmen's Agreement, particularly Rule 76, when it abolished position 45-011, Signalman 20 D&F, Crew #2.

(b) The Carrier now be required to compensate the position of Leading Signal Maintainer, Mason City, established just prior to the instant abolishment, on January 24, 1972, under the 20 D&F rates and rules from February 4, 1972. [Carrier's File: 79-24-4]

OPINION OF BOARD: The instant claim arose from the abolishment of a monthly rated relief signal position, Position 45-011, Crew No. 2, on or about February 4, 1972. Such relief signal positions are compensated at a monthly rate determined pursuant to Rule 20(d) of the parties agreement, as amended by the Memorandum Agreement of January 14, 1972. Regularly assigned monthly rated signal positions are governed and compensated pursuant to Rule 59(b) of the controlling Agreement. On January 24, 1972 prior to the abolishment of 45-011, Carrier created the position of Leading Signal Maintainer, Mason City, Position 13-001, a regularly scheduled monthly rated position under Rule 59(b). Based upon the foregoing, Petitioner alleges that Carrier violated Rule 76 of the current Signalmen's Agreement.

Rule 76 upon which Petitioner relies reads as follows:

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

Petitioner raises many arguments for the first time in its ex parte submission which accordingly are not considered herein. On the property, Petitioner contended that Position 13-001 should be compensated under Rule 20(d) rather than Rule 59(b) because: "The Carrier has abolished the vacation and emergency relief position and has elected to assign the work to the newly established position, as no other relief is possible." Careful analysis of the relevant evidence compels us to conclude that this allegation is not supported by the record.

The claim is premised for the most part upon the assumption by Petitioner that the occupant of Position 13-011 ineluctably must perform relief work associated with the 20(d) position. But the record shows that a 20(d) position was reestablished on April 24, 1972 as needed to relieve vacationing signalmen. To the extent that the Petitioner suggests that Rule 20(d), as amended by the Memorandum Agreement, requires Carrier to keep in continuous existence relief positions whether needed or not, it is in error. See Award 14738, 20342 and Award 13 of S.B.A. No. 371. Moreover, the reestablishment of the 20(d) position in April negatives the assumption, if arguendo it was valid initially, that the 59(b) position performed relatively the same class of work; and there is no other substantial probative evidence on this record that such relatively similar work was performed. Finally, the record does not show that the purpose of the abolishment was to reduce rates of pay. Indeed, Petitioner in its Rebuttal Statement declares "Position 13-001 . . . has a higher monthly rate than Position 45-011." See Award 13933.

In all of the foregoing we are unable to find a violation of Rule 76 as alleged by Petitioner. We have no alternative but to 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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Pearlman
Executive Secretary

Dated at Chicago, Illinois, this 16th day of May 1975.