

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20985
Docket Number CL-20958

Joseph A. Sickles, Referee

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

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-7703) that:

1. The Carrier violated the effective Clerks' Agreement when it required Comptometer Operator A. Guzy to perform work regularly assigned to the position of Timekeeper and Distribution Clerk, a higher rated position, without the benefit of such higher rate.

2. The Carrier shall now be required to compensate Comptometer Operator A. Guzy the difference between the rate of pay of her regularly assigned position of Comptometer Operator (\$39.11 per day) and the position of Timekeeper and Distribution Clerk (\$40.76 per day) for September 10, 11 and 12, 1973, respectively.

OPINION OF BOARD: Claimant is a regularly assigned Comptometer Operator with a daily pay of \$39.11.

On September 10, 11 and 12, 1973 Claimant performed certain work which, according to the Employees, is regularly and exclusively performed by incumbents of the "Timekeeper and Distribution" clerk position. The daily rate for that position is \$40.76. When Claimant was compensated at the lower rate, she asserted a violation of Rule 57:

"RULE 57 PRESERVATION OF RATES

Employees temporarily or permanently assigned to higher-rated positions shall receive the higher rates while occupying such position; employees temporarily assigned to lower-rated positions shall not have their rates reduced.

A 'temporary assignment' contemplates the fulfillment of the duties and responsibilities of the position during the time occupied, whether the regular occupant of the position is absent or whether the temporary assignee 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."

Certain pertinent factual assertions, and Carrier's contentions are expressed in its February 28, 1974 denial letter to the General Chairman:

"As provided in Rule 57 - Preservation of Rates - a 'temporary assignment' contemplates the fulfillment of the duties and responsibilities of the position during the time a lower rated clerk is assigned thereof. The facts in this case are that two of the three timekeeping positions in the Accounting Department were vacant pending bulletin and assignment between September 5 and September 12, 1973. Consequently there was a backlog of time keeping and as stated by you, Clerk Guzzy did sort and number time classifications. There was no suspension of work on her Comptometer Operator position because as stated by Mr. Shepherd in his letter to former General Chairman Mutzbauer she had completed all work assigned to her and had asked for additional duties to fill out her tour of duty.

Even though the provision of the Rule necessary to sustain this claim by assigning duties and responsibilities of timekeeper to the claimant was not met, the duties assigned are neither exclusive duties of a timekeeping position or are they the duties on which the higher rate is applied to the time-keeping position. For example, as stated in Award No. 14218 the Board found 'there is no persuasive evidence that work connected with these forms represented the basis for the Assistant Cashier-Teller rate differential.'

See also Awards Nos. 10906, 11889 and 16828, as well as the Awards cited in the findings in these numbered Awards.

As stated in many Awards of the Third Division and specifically in 11889, cited above, 'almost without exception, individual employes perform additional clerical functions which, from time to time, may be shifted from one position to another. No rule of the Agreement provides or even contemplates that the higher rate of pay will follow the transfer of such incidental clerical functions.'

This claim is not supported by the rule cited nor the interpretation of similar and identical rules by the Third Division and the claim is declined."

Numerous Awards of this Board have commented upon "Preservation of Rates" Rules and we feel that the current status of Board Law on the topic is well stated in Award No. 20478:

"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... (Awards cited)... 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.... (Cited Awards)..."

A review of the entire record shows that the Employees assert that the violation resulted from Claimant's sorting of timeslips in date order by occupational classification and numbering the timeslips by job number. Neither the advertising bulletins, nor the evidence submitted on the property, are sufficient for us to reach a conclusion that Claimant's performance constituted a substantial fulfillment so as to require compensation under Rule 57.

As noted in Award 20478, the burden of proof is on the Employees, and we are unable to find that they have sustained that burden.

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 claim is dismissed for failure of proof.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

G.W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 27th day of February 1976.