

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21127
Docket Number CL-21148

Joseph A. Sickles, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees

PARTIES TO DISPUTE: (

(Butte, Anaconda & Pacific Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-7882) that:

1. Carrier violated the Clerks' rules agreement at Anaconda, Montana, when, on May 15, 1974, it established a continuing position titled "Junior Warehouseman", paying as of that date, \$37.80 per day in the Store Department.

2. Carrier shall now be required to restore the title of "Warehouseman" to the position in the Store Department at Anaconda and assign this position the commensurate rate which, on date of claim, was \$41.08, and this amount shall be adjusted to reflect subsequent general wage increases.

3. Carrier shall now be required to pay Robert Maehl, his substitutes and successors, \$3.28 for each day the Junior Warehouseman position was and is assigned to work, commencing May 23, 1974; said amount to be adjusted to reflect all subsequent wage increases.

OPINION OF BOARD: In May of 1974, Carrier awarded the position of Junior Warehouseman. The Employees protested the action, asserting that the position should have been bulletined as a Warehouseman. They contend that the bulletin in question contained the same major assigned duties as a Warehouseman - rather than those formerly assigned to the Junior Warehouseman, which is contrary to Rule 39:

"RULE 39. ADJUSTMENT OF RATES

When there is a sufficient increase or decrease in the duties and responsibilities of a position or change in the character of the service required, the compensation for such position will be subject to adjustment by mutual agreement with the duly accredited representative, but established positions will not be discontinued and new ones created under the same or different titles covering relatively the same class or grade or work, except by negotiation."

Both parties have stressed that the opposing party has submitted documents which were not considered while the dispute was under consideration on the property. Consistent with the long-established procedures of this Board, we have disregarded all such items and confined our consideration solely to those matters which are properly before us.

The Employees have the burden of proving the claim. Obviously, the Agreement would preclude a unilateral reduction of compensation for a given position, but we are unable to find a specific showing of facts, on the property, to warrant a conclusion that Carrier violated the Agreement. We have noted that a Junior Warehouseman assists a Warehouse Foreman - not a Warehouseman, and we have also noted that contrary to the Employees' suggestion, the position of Junior Warehouseman has been occupied, in the past, when the Warehouseman position was vacant.

In Award 18082, relied upon by Claimants, there was a finding that an established position was discontinued, and a new position created which covered "relatively the same ... work..." This record does not present sufficient factual evidence for formulation of such a conclusion.

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 be dismissed.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A.W. Paulson
Executive Secretary

Dated at Chicago, Illinois, this 16th day of July 1976.