

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21277
Docket Number CL-21142

Joseph A. Sickles, Referee

PARTIES TO DISPUTE:

{ Brotherhood of Railway, Airline and
{ Steamship Clerks, Freight Handlers,
{ Express and Station Employees
{
{ The Detroit and Toledo Shore Line
{ Railroad Company

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood
(GL-7881) that:

1. The Carrier violated the effective Clerks' Agreement when it abolished Rate Clerk Position Nos. 723 and 724 and concurrently therewith established Positions Nos. 731 and 732, Train Clerk, performing the same duties as the abolished positions, but at a lesser rate of pay;

2. The Carrier shall now be required to compensate Clerk Maurine Gernhauser, and/or her successor or successors in interest, namely, any employee or employees who may have stood in the same status as claimant and who were adversely affected, as the incumbent of Position No. 731 the amount of \$1.3843 per day, commencing with March 30, 1974 and continuing for each and every day thereafter that a like violation occurs.

3. The Carrier shall now be required to compensate Relief Clerk Marvin Murray, and/or his successor or successors in interest, namely, any employee or employees who may have stood in the same status as claimant and who were adversely affected, as the incumbent Relief Position No. 1 the amount of \$1.3843 per day commencing with Wednesday, April 3, 1974 and continuing for each and every Wednesday, Thursday, Friday and Saturday thereafter that a like violation occurs.

4. The Carrier shall now be required to compensate Clerk A. E. Williams, and/or his successor or successors in interest, namely any other employee or employees who may have stood in the same status as claimant and who were adversely affected, as the incumbent of Position No. 732 the amount of \$1.3843 per day commencing with April 5, 1974 and continuing for each and every day thereafter that a like violation occurs.

OPINION OF BOARD:

In March of 1974, Carrier abolished two Rate Clerk positions, and transferred certain work to Train Clerk Jobs. The daily rate for the Train Clerk position was \$1.3843 less than for the prior positions.

The Organization objects to the Carrier's action, and cites
Rule 40:

"Established positions shall not be discontinued and new ones created under the same or different titles covering relatively the same kind or grade of work for the purpose of reducing the rate of pay or evading the application of this agreement."

Once again, this Board is confronted with a sharp factual dispute. The Carrier denies a violation of the agreement and argues that different types of work are handled by the respective positions under consideration, and there are allegations of certain factual matters in the Submissions and Rebuttals which were not handled while the matter was under consideration on the property.

Quite frequently, when there are sharp factual disputes in this type of a case, the Employees - who have the burden of proof - fail in their claim because the evidence does not preponderate to their benefit. But, in this case we feel that the Employees made a clear prima facie showing of a violation when it submitted three statements from employees who perform the various duties on a regular and continuing basis.

Those statements clearly assert that the employees are performing identical work, and they spell out that work. To be sure, in subsequent correspondence the Carrier took issue with those assertions, but did not present direct evidence of contradiction by individuals who perform the duties involved. Carrier suggests that we ignore the statements because they are identical and were assumedly prepared by the same person. We do not feel that such an assertion, in and of itself, is a valid basis for ignoring the evidence, absent some showing of collusion, fraud, or the like.

Accordingly, we find that the Employees have made a prima facie showing of a violation and that Carrier has failed to rebut same.

Carrier has objected to that portion of the Claim which seeks relief for successors, etc. While clearly this Board will not engage in speculative Awards; nonetheless, the dispute is specific in nature and the claim speaks in direct terms to employees who were incumbents of clearly defined positions, identified by specific number. Thus, we feel that the claim is not speculative in nature and should 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: G. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 15th day of October 1976.