

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21690
Docket Number CL-21510

Joseph A. Sickles, Referee

(Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employees
PARTIES TO DISPUTE: (
(Burlington Northern, Inc.

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood,
(GL-8106) that:

1. Carrier violated the Agreement between the parties when, effective January 1, 1975, it unilaterally reclassified the Agent-Operator position at Eola, Illinois to first Operator, and reduced the rate of pay of the position.

2. Carrier shall restore the classification of Agent-Operator to the position at Eola, Illinois, and compensate D. W. Miller and L. C. Onak and/or their successors, if any, the existing differential between \$5.37 and \$5.26 per hour for all time worked at the lower rate (plus subsequent wage increases), as well as interest payment at the rate of eight per cent (8%) on the amount due, effective January 1, 1975, and continuing so long as the violation continues.

OPINION OF BOARD: Claimant Miller occupies an Agent-Operator position at Eola, Illinois, Monday through Friday, and Claimant Onak was assigned to said position on Saturdays and Sundays. On December 23, 1974, Carrier, according to Claimants, reclassified the position to "First Operator" position and reduced the rate of pay by eleven cents (11¢) per hour, as of January 1, 1975.

Claimants assert that the Carrier action referred to above violates Rule 6(C) of the Agreement:

"Positions (not employees) shall be rated except as otherwise agreed to. Changes in classification of positions or rates or pay shall be made only by agreement between the Management and the Organization."

Carrier denies a violation, stating, in its initial reply to the claim, that it did not change the classification, but abolished the position and re-established the position as "First Operator" with the same rate of pay as the other operator positions in the office. Further, it stated that actual abolishment of the Agent-Operator position (at Eola) was in progress and the new position would be bulletined.

Claimants reply that the December 23, 1974 notification, which stated that the position would be changed, and the rate reduced was never cancelled. The Carrier's reply to the above assertion is that:

"When new positions are created or duties are materially increased, compensation shall be arranged to conform with positions of the same class as shown in this schedule."

The Organization presents the assertion that the Claimants performed substantially the same work after the alteration that they performed prior to the beginning of 1975. In response, the Carrier points out that while said assertion may be the case, it stems from the fact that there were no "agent" duties to perform at Eola because they had been removed - and placed under the jurisdiction of the Aurora agent - a few years ago, at which time the Agent-Telegrapher position should have been abolished. The Organization appears to understand the Carrier's factual assertion in this regard.

Thus, Carrier asks if (because it did not make the changes at Eola when it should have) it is now forever precluded from rectifying the circumstance.

Our difficulty with Carrier's contention is that it seems to presume, without establishing, that at a previous time it automatically could have contractually accomplished the result it desires here; but it does not suggest the manner of said accomplishment. The parties have presented, and relied upon, two paragraphs of Rule 6 (references to Appendix B do not appear to resolve the dispute). The Carrier states that its actions were permitted by Rule 6(B). But, that rule refers to new positions being created or duties being materially increased. The record does not suggest to us that either event was present at the previous time referred to by Carrier. On the other hand, Rule 6(C) is clear that a change in a classification of a position shall be made only by agreement. While this result may seem harsh, the parties - not this Board - authorized the language which controls.

We will sustain the claim except for that portion of the claim which seeks interest. We have noted that Claimant Miller has not suffered a loss in hourly compensation due to certain merger protections. It is not the intention of this Award that he receive more than the hourly amount established for the Agent-Operator position.

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 to the extent stated in the Opinion of the Board.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 31st day of August 1977.