

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22582
Docket Number CL-22556

Richard R. Kasher, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employes
(
(Chicago, Milwaukee, St. Paul and Pacific
(Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-8567) that:

1) Carrier violated the Clerks' Rules Agreement on July 6, 1976 at Green Bay, Wis., when it failed and/or refused to bulletin Position No. 37080, Clerk.

2) Carrier further violated the Clerks' Rules Agreement on July 6, 1976, when it arbitrarily required employe R. B. Schneider to suspend work on Position No. 37080 and assume the duties of Yard Clerk Position No. 37000.

3) Carrier shall now be required to compensate employe R. B. Schneider an additional eight (8) hours at the pro rata rate of Position No. 37080 account failure to bulletin Position 37080 (per Item (1) above) for the following dates:

July 1, 2, 6, 7, 8, 9, 12, 13, 14, 15, 16, 19,
20, 21, 22, 23, 26, 27, 28, 29, 30;
August 2, 3, 4, 5, 6, 9, 10, 11, 12 and 13, 1976.

4) Carrier shall further be required to compensate employe R. B. Schneider an additional eight (8) hours at the pro rata rate of Position 37080 account arbitrarily requiring her to suspend work on Position 37080 (per Item 2) for the following dates:

July 6, 7, 8, 9, 12, 13, 14, 15, 16, 19, 20, 21,
22, 23, 26, 27, 28, 29, 30;
August 2, 3, 4, 5, 6, 9, 10, 11, 12 and 13, 1976.

OPINION OF BOARD: The relevant facts in the instant case are that the Claimant was the occupant of Position No. 37080, clerk, prior to April 26, 1976. On April 27, 1976, the Claimant was displaced by a senior employee. On that same date, April 27, 1976, the employee who had displaced Claimant requested and was granted a vacation vacancy commencing on that date by the Carrier. Claimant was then, requested by the Carrier, pursuant to Rule 12(d) to assume the duties associated with Position No. 37080. Claimant worked Position No. 37080 between the dates of April 27th and July 5, 1976. On July 6, 1976, Claimant was directed by the Carrier to assume the duties of the position of Yard Clerk, No. 37000.

The Organization contends that as a result of the Carrier's removing Claimant from Position No. 37080 and requiring Claimant to perform the duties of Position No. 37000, the Carrier violated Rules 9, 12 and all related Rules of the Agreement. The Organization also disputes the Carrier's argument that the Claimant agreed to work Position No. 37000 since individuals cannot reach understandings or make agreements which are contrary to the terms of the collective bargaining agreement. And, the Organization discounts the Carrier's argument that the Claimant received higher compensation by working Position No. 37000 as opposed to Position No. 37080. The Organization argues that the compensation argument raised by the Carrier does not absolve it from violations of the collective bargaining agreement; and further, the Organization contends, that certain other emoluments of employment changed for the employee when she was required to work Position No. 37000 as opposed to Position No. 37080.

Although the Carrier has spent considerable effort in arguing the compensation defense, the threshold issue, which the Carrier also raises, is whether on July 6, 1976 Position No. 37080, from which the Claimant was removed, was properly blanked/abolished.

The evidence below supports the Carrier's position that:

- (1) It was not required under any of the terms or conditions in the collective bargaining agreement to bulletin Position No. 37080 subsequent to July 6, 1976;
- (2) That Position No. 37080 was abolished on or about July 6, 1976;

- (3) After July 6, 1976, Position No. 37080 was not a regular position and Claimant had no rights to such non-existent position; and
- (4) Subsequent to July 6th and through August 13, 1976, there is no evidence of record that other employees were utilized on Position No. 37080, regularly or on an overtime basis.

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 not violated.

A W A R D

Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 30th day of October 1979.