

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22752
Docket Number CL-22805

George E. Larney, Referee

PARTIES TO DISPUTE:

(Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employees
(
(The Baltimore and Ohio Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-8708) that:

(1) Carrier violated the Clerk-Telegrapher Agreement at Willard, Ohio, when effective Thursday, May 13, 1976, it required Machine Clerks in Willard Terminal Service Center to perform higher rated work formerly performed by abolished Operator position C-141 and by Manager Wire Chief position C-56, without proper compensation, and

(2) Carrier shall, as a result, be required to compensate H. L. Haupricht, Machine Clerk position C-383 - 4:00 PM to 12 MN., M. A. King, Machine Clerk position C-384 - 11:59 PM to 7:59 AM, J. M. Underwood, Machine Clerk Relief position C-391 - various hours, and R. E. Neidermeier, Machine Clerk Relief position C-392 - Friday relief 11:59 PM to 7:59 AM, or their successors, the difference in rate of Manager Wire Chief position C-56, rate - \$53.89 per day, and Machine Clerk positions listed above, rate - \$51.51 per day, (a total of \$2.38 per day) plus general wage increases, commencing May 13, 1976, and continuing each subsequent date until the violation ceases.

OPINION OF BOARD: The Claimants involved in this case total four (4), two of whom are classified as Machine Clerks, and two of whom are classified as Machine Clerks Relief and all are employed at Carrier's Terminal Services Center at Willard, Ohio. Petitioner alleges the Claimants were required to assume certain "higher rated duties" derived from the abolishment of Job C-141 and that such assumption of duties was in violation of Rules No. 16 and 17 of the Controlling Agreement, effective June 4, 1973. These Rules read as follows:

"Rule 16 - Preservation of Rates:

"(a) Employees temporarily assigned to higher rated positions, shall receive the higher rates for four (4) hours' work or less, and if held on such position in excess of four (4) hours, a minimum of eight (8) hours at the higher rate. Employees temporarily assigned to lower rated positions shall not have their rates reduced.

"(b) 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."

"Rule 17 - Change in Duties and New Positions:

"When new positions are created, duties of existing positions materially changed or duties of existing positions changed from one class to another, compensation will be fixed in conformity with the same class and character of positions as are specified in the wage scale for the portion of the division on which located, and the rules will apply to employees filling such positions; provided, the entering of employees in the positions occupied in the service or changing their classification or work shall not operate to establish a less favorable rate of pay or condition of employment than is herein established. New rates of pay to be effective from date first taken up by the representative of the employees.

"(It is understood that when increases are granted under the terms of this paragraph to certain positions on account of increased duties, such increases will be eliminated when the increased duties for which the increase was granted are discontinued.)"

Petitioner also alleges a violation of Section 3 of Article VIII of the February 25, 1971 Mediation Agreement claiming no notice of abolishment of Job C-141 was given to the General Chairman. This Section of the Mediation Agreement reads as follows:

"(a) On and after the dates seniority rosters are combined in accordance with the provisions of this Article, the Carrier may combine work and/or functions performed by clerks and telegraphers. When new positions are created and/or when positions are abolished as a result of the combining of such work and/or functions the carrier shall give at least thirty (30) days' written notice to the General Chairman involved. Such new positions shall be assigned on the basis of seniority, fitness and ability (fitness and ability being sufficient, seniority shall prevail) to the employees affected by the combining of said work and/or functions and on the basis of their combined roster seniority. If the affected employees do not desire assignment to such new positions, the new positions will be bulletined to employees on the combined seniority roster. If rosters have been combined under Section 1(a) or (b) of this Article, the new positions will be designated 'c' or 'T' in accordance with the designation of the initial employees assigned to such positions. In the event an employee has no such designation, the designation will be determined by the Organization without liability to the Carrier.

"(b) When new positions are created and/or positions abolished as a result of the combining of such work and/or functions the rate of pay of the new or surviving positions will be no less than the highest rate of pay of the positions involved."

Petitioner requests as a remedy that Claimants be compensated a total of \$2.38 per day which represents the difference in the rate of their job classifications and that of the rate of the Manager Wire Chief's position to which the same duties of the abolished position were also assigned. Petitioner requests that the payment of \$2.38 per day commence from date of May 13, 1976 through date violation ceases.

Petitioner has cited to us several Awards in support of their contentions relative to Rule 16. However, the fact situation present in this case does not lend itself to any application of Rule 16 which only becomes operative when an employee is "temporarily assigned to higher rated positions" which is not the case here.

As for Rule 17 and Section 3 of Article VIII of the February 25, 1971 Mediation Agreement, we are unable to find any supportive probative evidence that Claimants' duties were materially changed or that the abolishment of job C-141 in any way involved the 1971 Mediation Agreement. In Award No. 21842 of this Division, we said:

"Given the paucity of probative evidence adduced by the organization in this case, we have no alternative but to conclude the record does not support the claim as presented. We must, therefore, deny the claim for failure of proof."

The same situation and conclusion is present here. This claim is denied for failure of proof.

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

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Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 29th day of February 1980.