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NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22775  
Docket Number CL-22580

William M. Edgett, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and  
( Steamship Clerks, Freight Handlers,  
( Express and Station Employees  
(  
(Missouri-Kansas-Texas Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood  
(GL-8623) that:

(1) The Carrier violated the current Clerks' Agreement at Kansas City, Kansas, when on April 15, 1977 it abolished Cashier Position No. 1890 and as a result thereof assigned certain duties of the abolished position to Bill Clerk Position No. 1894 without properly adjusting the rate of pay.

(2) Carrier shall now be required to compensate Mr. Mathew L. Mallot, III, occupant of Bill Clerk Position No. 1894, for the difference in rate of pay of his regular assignment and that of the abolished Cashier Position No. 1890 commencing April 18, 1977 and to remain in effect until such time as this dispute is resolved.

OPINION OF BOARD: Carrier abolished Cashier Position No. 1890 at Glen Park, Kansas. This claim is from the incumbent of Revising Clerk Position No. 1894 who asserts that the balance of the duties from the Cashier's Position were transferred to his position. He seeks the difference between his rate and the Cashier's rate, relying on Rule 36(b) which reads: (in pertinent part)

"(b) When a position is abolished, the remaining work will be assigned to positions with rates equal to or in excess of the rate of the position abolished..."

Carrier takes the position that Rule 36(b) does not apply because it is applicable only to force reductions and there is no showing of a force reduction here. That suggestion cannot be accepted by the Board. There was a force reduction, due to the abolishment of the position in question.

Carrier has asserted that the Organization has failed to prove that Claimant performed duties formerly assigned to the Cashier Position. During the handling of the claim on the property, the Organization presented Carrier a list of the duties referred to, and other evidence. Carrier's response is that the evidence is "meaningless" and not of probative value. On their face the listed duties are recognized as those of a Cashier. Once presented with evidence to support the claim, Carrier was required to do more than declare it "meaningless." If the evidence were obviously meaningless, that response might be adequate. It was not, however, and from it the Board finds that Claimant was assigned duties which had been assigned to the abolished Cashier's position. Carrier, in its submission, recognizes that the "preponderance" of the duties of the Cashier's position were transferred to another location. Transfer of a "preponderance" of duties leaves others. The Organization has explained what happened to the duties which remained at Glen Park. They were assigned to Claimant.

Rule 36(b) is clear. After abolishment of a position remaining duties must be assigned as the rule requires. Carrier cannot read the rule out of the Agreement by asserting that a Claimant who has assumed part of the duties is not performing a substantial or major portion of the duties of the abolished position. Claimant was performing the remaining work from Cashier Position No. 1890. Under the provisions of Rule 36(b) Carrier was required to assign those duties to a position with a rate equal to or in excess of the abolished position. It did not do so.

For the reasons stated, the Board will sustain the claim.

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 Employee involved in this dispute are respectively Carrier and Employee 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

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That the Agreement was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: A.W. Paulos  
Executive Secretary

Dated at Chicago, Illinois, this 14th day of March 1980.