

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22804  
Docket Number CL-22842

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-8726) that:

(1) Carrier violated the Agreement in effect between the Parties when, beginning February 2, 1976, it required Crew Dispatchers located at Cumberland, Maryland, to perform higher-rated Caller work and service, that which was diverted from, and formerly performed by, Western Maryland Railway clerical employees at Hagerstown, Maryland, without benefit of proper compensation, and

(2) Carrier, as a result of such improper action, shall now be required to compensate the employees affected by such material change, the difference between the compensation allowed and the compensation claimed, as set out below, commencing February 2, 1976, and continuing each subsequent work date until the violation is corrected:

<u>Employee</u>	<u>Amount Claimed</u>	<u>Amount Allowed</u>
J. S. Castle	\$ 61.44	\$ 57.16
H. F. Dawson	56.34	50.46
J. E. Beesick	56.34	53.61
W. R. Bearinger	56.34	50.09
V. G. Wharton	56.34	53.61
C. A. Clark	56.34	50.03
R. L. Slaughter	56.34	50.09
W. P. Chidester (Relief)	56.34	Various
C. R. McCreary	56.34	50.03

OPINION OF BOARD: On December 31, 1975, the parties entered into a mutual agreement to take effect on February 2, 1976 which provided that, all the employees and work of the class or craft commonly known as Clerks, Telegraphers and other office, Station and Storehouse Employees originally covered by the General Agreement revised January 1, 1972 between the Western Maryland Railway Company and the Brotherhood of Railway, Airline and Steamship Clerks (BRAC), be placed under the General Agreement

effective June 4, 1973 between the Baltimore and Ohio Railroad Company (B&O) and BRAC. Pursuant to the terms of the February 2, 1976 Agreement, the names and seniority dates of all Western Maryland clerical employes were merged and dovetailed onto the appropriate Baltimore and Ohio clerical seniority roster. Also pursuant to the February 2, 1976 Agreement, there was effected an integration of the B&O and Western Maryland yard switching operations on January 5, 1976, and subsequent integration of parts of the B&O and Western Maryland road service as well.

Prior to the consolidation of B&O and Western Maryland clerical work on February 2, 1976, the calling of Western Maryland train and engine service employes on the entire System was done by employes in a Centralized Crew Calling Office at Hagerstown, Maryland. However, effective February 2, 1976, the Claimant Crew Dispatchers were required to begin calling Western Maryland train and engine service employes assigned to the extra lists at Cumberland. In addition, some of the calling of Western Maryland road crews operating out of Cumberland was assigned to the Claimant Crew Dispatchers at Cumberland, work previously done by the Western Maryland Crew Dispatchers at Hagerstown, Maryland. In all, the work of calling crews for five (5) Sub-divisions was transferred from Crew Dispatchers at Hagerstown, Maryland to Crew Dispatchers at Cumberland, Maryland.

It is the position of Petitioner that the transferred work of calling crews assigned the Claimant Crew Dispatchers at Cumberland entitles them to the higher rate of pay received by the Crew Dispatchers at Hagerstown. This transferred work, Petitioner maintains, materially changed the quantity and conditions of the work and positions at the Crew Dispatchers Office at Cumberland. In support of its position, Petitioner alleges Carrier is in violation of Rules 16 and 17 of the Agreement, effective June 4, 1973, which read in whole 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 positions 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.)

Upon a careful and thorough review of the record, we find that Rule 16 has no application at all to the instant dispute as none of the Claimants were temporarily assigned to higher rated positions. Rather, this dispute concerns work made a regular part of the Claimants' positions. With respect to Rule 17, said rule embodies a formula for fixing compensation when new positions are created, when duties are materially changed or when existing positions are changed from one class to another. We find in the instant case no new positions created nor a change in existing positions from one class to another. Furthermore, we are unable to find in the record a preponderance of probative evidence which supports Petitioner's allegation that the work transferred from the Crew Callers Office in Hagerstown to the Crew Callers Office in Cumberland in any way materially changed the work of the Claimant Crew Dispatchers. Rather, we find that even though the transferred work resulted in an increase in the number of train and engine service employes to be called by the Claimant Crew Dispatchers, nonetheless, the nature of the work involved remained the same. We find nothing in the record to dispute the fact that subsequent to February 2, 1976 when the

transferred work took effect, the Claimant Crew Dispatchers continued to work eight (8) hours per day calling crews the same as they had always done.

Based on the foregoing discussion, we find nothing in the record to support the claim as advanced by Petitioner in the instant case. We therefore dismiss the claim on account, 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 Employes involved in this dispute are respectively Carrier and Employes 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 dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

A. W. Paulos  
Executive Secretary

Dated at Chicago, Illinois, this 31st day of March 1980.

