

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22996  
Docket Number CL-22737

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and  
( Steamship Clerks, Freight Handlers,  
( Express and Station Employees  
(  
(Seaboard Coast Line Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-8662)  
that:

(1) Carrier violated the Agreement effective July 12, 1977, when it arbitrarily and unilaterally changed the assigned duties on the position of Porter at Fitzgerald, Ga., to include driving Company vehicle (and hauling crews) without properly negotiating the rate of pay and classification of same.

(2) As a consequence of this violation, Carrier shall be required to compensate Claimant R. A. Morgan the rate of \$53.97 per day which is the present rate of pay paid Porter Drivers as is evidenced by Lines 27 and 32 on current seniority roster for the Atlanta Division, seniority district dated July 1, 1977, commencing August 1, 1977, and continuing for him, his relief and/or successor for each subsequent day so long as the violation continues. Additionally, Carrier shall be required to properly negotiate the rate and duties of this position to properly conform to the duties the incumbent thereof is required to perform.

OPINION OF BOARD: When the prior incumbent of the porter's position at Fitzgerald, Georgia retired, Carrier advertised a "Porter-Driver" position. But, on the next day a corrected bulletin was issued as a "Porter" position. Claimant asserts that the rate paid (\$47.93 per day) is improper because the duties required are identical to those performed by other Porter-Drivers on the same division (\$53.97).

Rule 31 specifies that positions - not employees - are rated and Rule 34 mandates that wages for new positions shall conform to similar positions in the seniority district. Thus, the Employees allege a violation because "... Carrier added to the assignment of Porter, the duties of driving company vehicles and transporting crews ..."

Carrier conceded, while the matter was being handled on the property, that when the former incumbent retired, the duty of transporting crews was added to the job requirements. But - Carrier stresses - this type of activity

is better described as "lower rated work". It is also conceded that the prior incumbent could not operate a motor vehicle.

Some two (2) months prior to forwarding an intention to file an Ex Parte submission to this Division, the Vice General Chairman noted that four (4) Porter-Driver positions in the seniority district received \$53.97. Although Carrier admits that the assigned duties of the July 13 bulletin were not altered from those contained in the July 12 "Porter-Driver" bulletin, it did not, on the property, dispute the assertion regarding the four (4) positions referred to above. To be sure, in its Submission the Carrier asserts that there are "... other differences in the duties ... resulting in different rates of pay" and it seeks to demonstrate certain factual events. But this Board has held in numerous Awards over the years that we are not constituted to consider - and base Awards upon - matters raised for the first time in the Submission to this Board. Normally that rule is invoked to prevent an attempt to add a basic ingredient necessary to support a claim; but the rule is equally applicable to bar an attempt to add a defense to a claim.

Thus, we are required to limit our consideration solely to the matters raised and considered on the property. Regardless of motivations and the "higher" or "lower" rated assertions this record suggests a new position and under this record our knowledge is limited to the fact that the July 13 bulletin was identical (except for title) to the "Porter-Driver" position listed on July 12, and the fact that other such positions in the district receive the higher rate. Limited solely to this record we 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

That the Agreement was violated.

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Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

A.W. Paulson  
Executive Secretary

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