

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23089
Docket Number CL-22572

William M. Edgett, Referee

PARTIES TO DISPUTE:

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
(
(St. Louis-San Francisco Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-8621) that:

1. Carrier violated the terms of the effective agreement between the parties when on October 15, 1976, it abolished the round house clerk position No. 60 at Ft. Smith, Arkansas, rate of pay effective January 1, 1977, \$51.27 per day; and, at the time of the abolishment, assigned the duties to a janitor messenger position No. 59 which has a rate of pay of \$45.20 per day.

2. Carrier shall now be required to compensate Mr. Doug Nicholson, or his successor as occupants of position No. 59, the difference between the rate of the janitor messenger position No. 59 (\$45.20 per day) and the rate of the round house clerk position No. 60 (\$51.27 per day) beginning December 31, 1976, until corrected.

OPINION OF BOARD: This is a claim for the difference in rates of Position No. 60, round house clerk, and Position No. 59, janitor-messenger, based upon the improper abolishment of Position No. 60 and the assignment of the remaining duties to Position No. 59 on October 15, 1976.

The Organization contends Carrier violated Rules 56, 58, 59 and 60 when it abolished Position No. 60 and required Claimant to assume a substantial portion of the work assigned to the abolished position, promising to adjust the rate but never following through with the adjustment.

Carrier contends that it implemented a program of repair and maintenance for all GP-7 and GP-38 locomotive units, transferring the work to Springfield, which resulted in a substantial reduction of the work required of the incumbent of Position No. 60. Carrier also asserts categorically, that it "made no promises, offered no advice, nor made any predictions on any subject" dealing with the alleged rate increase. The Carrier contends that prior to the abolishment of Position No. 60, the incumbent of that position and the incumbent of Position No. 59 both performed some of the duties listed by the Organization and, furthermore, some of the work is performed by other clerical positions.

Our evaluation of the record satisfies us that the parties are in direct conflict on the evidence presented, to the extent that we are unable to make a reasoned finding on the issue. In our Award 20408 we stated the principle applicable to the present dispute as follows:

"The Board has often held that in the face of a conflict, such as that presented here, it will dismiss the claim on the basis that claimant has failed 'to establish facts sufficient to require or permit a finding that Carrier' violated the Agreement ...".

The Carrier also asserts a time limit violation occurred in this case; however, because of our disposition of the claim as stated above, we need not consider the respective contentions dealing with that issue.

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 dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: *A.W. Pauls*
Executive Secretary

Dated at Chicago, Illinois, this 15th day of December 1980.

