

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23158
Docket Number CL-23066

Joseph A. Sickles, 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-8832)
that:

1. Carrier violated the Rules of the Clerks Agreement, including but not limited to Rule 44 of DP-451, when by Bulletin No. 101 of December 20, 1977 it abolished a five (5) day Position No. 1526 located at Franklin-Columbia, Missouri to be effective January 8, 1978, and then by Bulletin No. 103 of December 21, 1977 it advertised a six (6) day Position No. 1532 at Franklin, Missouri with title of Agent-Telegrapher, and shown as a reinstated position.

2. Carrier shall be required to compensate the incumbent of Agent-Telegrapher Position No. 1532 and any future incumbent of that position for eight (8) hours pay at the applicable one and one-half rate for each Saturday commencing January 14, 1978 and for each Saturday thereafter, or until such time as violation is corrected.

OPINION OF BOARD: The Organization cites a December 20, 1977 Bulletin No. 101 which abolished Consolidated Agent Position No. 1526, effective January 8, 1978, and on the same date Bulletin No. 102 advertised a six (6) day Agent Telegrapher Position No. 1532. The bulletin stated that the position was a "reinstated position."

The Organization has referred to certain position abolishment in December of 1974, and asserts that the December 19, 1977 bulletin is improper because it advertises the six (6) day position as a "reinstated position." But, it asserts that under the pertinent rules, the position cannot be considered as "reinstated." Accordingly, claim was made for 8 hours' pay at the time and one-half rate for Saturdays, as required by Rule 45.

The parties have made repeated reference to the "Note" to Rule 44, which states:

"The above provisions of this Rule 44 pertaining to 40 hours work per week do not apply to the following positions, whose monthly rate compensates for six days per week - 211-2/3 hours per month (212-1/3 hours per month effective January 1, 1973)."

The position which was abolished in December, 1974 was included in the Note to Rule 44.

The Organization argues that when the Carrier abolished the position, it removed that position from the exceptions to Rule 44, and thus an attempted reinstatement of the position without paying the overtime compensation, as required by Rule 45, is prohibited.

It is our view that Rule 18 of the agreement permits positions to be reinstated. Clearly, Rule 18 contains certain restrictive provisions which apply if the position is reinstated within ninety (90) days, however, that does not prohibit the Carrier from reinstating the position after ninety (90) days have elapsed.

We have, of course, confined our review of this matter to the dispute as considered and handled on the property. References to Rule 59(b) are accordingly misplaced in our review of the matter.

We have considered the Organization's contentions at length; however we are unable to find any rule of the agreement which lends support to the assertion made by the Organization that abolishment of a position automatically removes that position from the exceptions to Rule 44, if that position is reinstated as permitted by Rule 18.

We have considered the Awards cited by the Organization in the oral presentation to us, however we do not find that they are pertinent to the type of agreement and record here before us. Accordingly, we will deny 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 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 denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: *A.W. Pauls*
Executive Secretary

Dated at Chicago, Illinois, this 30th day of January 1981.