

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23297
Docket Number CL-23150

John J. Mikrut, Jr., 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-8905) that:

(1) Carrier violated the Clerk-Telegrapher Agreement in effect between the Parties when, effective Wednesday, June 1, 1977, it instructed and required James I. Wise, Jr., incumbent position C-146 - Report, Discipline and Tonnage Clerk, Division Manager's Office, Baltimore, Maryland, to perform higher-rated duties diverted from partially-excepted "B" position No. 29 - Secretary to Superintendent - System, Hagerstown, Maryland, without being compensated at the established rate of the work performed, and

(2) Because of such impropriety, Claimant Wise shall now be paid the difference between what he was paid as of June 1, 1977, (\$53.67 per day) and what he should have received (\$56.92 per day), plus the general wage increase of July 1, 1977 for all work days he was and is subsequently required to perform the higher-rated work transferred from "B" position No. 29 to his assigned position C-146, retroactive to and including June 1, 1977.

OPINION OF BOARD: Claimant, a Report-Discipline-Tonnage Clerk, position C-146 (\$53.67 per day), was assigned to the Division Manager's Office at Baltimore, Maryland.

On May 13, 1977, Carrier permanently abolished the General Clerk position C-637 in the Superintendent's Office at Hagerstown, Maryland. Said position was rated \$55.10 plus \$1.52 Cost-of-Living Adjustment (\$56.52 per day) and among the duties performed by the incumbent were:

"Handle various daily, weekly and monthly reports including RDG Company Crew Mileage Report, percentage of power report, various engine hour reports, etc."

The above described work was transferred to a partially-excepted "B" class position, B-29, Secretary to Superintendent/System, at Hagerstown, Maryland. The latter position was rated at \$56.92 per day, which included \$1.52 Cost-of-Living Adjustment. Soon after the above stated transfer of duties was effectuated, the "B" position incumbent retired and on May 18, 1977,

her partially-excepted position was advertised for bid by Carrier. The bulletined vacancy was identified as Position No. B-29, Secretary to Superintendent System and the basic duties were described as follows:

"Perform general secretarial duties including dictation and typing. Transcribe investigations. Type stencils for and distribute bulletin orders, slow orders and general orders. Maintain records of retiring employees and handle requests for retirement certificate. Handle incoming and outgoing mail. Filing. Handle various daily, weekly and monthly reports including RDG Company Crew Mileage Report, percentage of power report, various engine hour reports, etc., key operator for office Xerox machine. Prepare violation of Hours of Service Law Report and perform any other duties as instructed."

As a result of the vacancy posting the senior qualified employee who was assigned to position B-29 was a Clerk-Typist at Hagerstown, Maryland. However, for reasons which are unclear in the record, on June 1, 1977, a portion of the work which had been originally assigned to Position B-29, Secretary to Superintendent/System at Hagerstown, Maryland, was transferred to Claimant, position C-146, at the Division Manager's Office, Baltimore, Maryland. The specific duties which were transferred to Claimant were as follows:

"...preparing reports involving Reading Railroad engines and crews and reports covering B&O engines and crews, preparation of reports involving ConRail engines, and verification of monthly statements involving use of Western Maryland Railroad engines on Reading and ConRail lines."

On October 11, 1977, Claimant's Organization filed a claim on his behalf contending that the transferred duties were previously performed by employees in higher-rated positions and that Claimant, therefore, should have been compensated for the difference of the two rates. In support of its basic position, Organization maintains that Carrier's action was in violation of Rules 15, 16 and 17 of the parties' existing agreement; that said change was a "material" change in Claimant's assignment; and that "(A)n employee assigned to perform higher-rated duties is not required to perform all of the duties of the higher-rated position in order to be entitled to the higher rate" (Third Division Awards 12088, 14681 and 20038).

Carrier's position herein is that, though the transferred duties involved the preparation of a report which Claimant heretofore had not prepared, such report preparation work was the type of work which was considered to be a normal part of Claimant's Report-Discipline-Tonnage Clerk duties and, therefore, was not "new" work (Third Division Awards 21842 and 22567); nor was it a "material" change (Third Division Award 22804).

Further, Carrier maintains that the higher rate of pay which was assigned to the two (2) secretarial positions (C-637 and B-29) was not assigned because of the "requirement to prepare reports," but rather because of the "secretarial duties" which were involved in these jobs. Accordingly, Carrier argues that Claimant was not assigned any of the higher-rated secretarial duties which were attached to the position of Secretary to Superintendent at Hagerstown, but was assigned only the one (1) additional report preparation responsibility which "required approximately forty-five (45) minutes to one (1) hour's time per day to prepare."

In addition to the above cited arguments, Carrier also maintains that the instant claim "represents nothing more than a request for an increase in pay on the assignment held by the Claimant Report-Discipline-Tonnage Clerk." Thus, in this regard, Carrier maintains that such requests are the proper subject for direct negotiations between the parties and that, under such circumstances, the Board is without authority to reclassify positions or to order a change in rates of pay (Third Division Awards 12672, 14966, 15341 and 18638).

The Board has carefully read and reviewed the entire record which has been presented in this dispute and finds that Carrier's position is correct and must be sustained.

In arriving at the above posited conclusion, the Board is convinced that Rule 17 of the Agreement rather than Rules 15 and 16 is solely applicable in this analysis since said Rule alone addresses the specific issue which is before us in the instant dispute (permanent transfer of job duties from one position to another). Given the facts of record therefore, there can be no doubt that the particular duties which were assigned to Claimant and which are contested herein came from a higher-rated position which was abolished by Carrier. However, there can be no doubt that the nature of the work which was involved in the transferred duties was of a "like kind" in both substance and responsibility to the work which Claimant was already performing in his position as Report-Discipline-Tonnage Clerk. In view of this particular determination, and insofar as the record is inconclusive in regard to whether a forty-five (45) minute to one (1) hour addition of similar clerical duties constitutes a "material" change in Claimant's position, we must conclude that the disputed transfer was appropriate and proper.

In similar fashion, Referee Larney in Third Division Award 22804, which involved the same parties, summarized as follows:

"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 employees 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" (Emphasis added by Board).

Because of the similarity of facts involved in the aforecited award, as well as this Board's concurrence with the conclusion reached therein, the Board can see no reason to deviate from the direction provided by said award, and we therefore dismiss the instant claim for failure of proof. Moreover, the Board further sees fit to note that, insofar as the parties themselves know best what duties are required in these disputed positions, as well as the amount of time and effort needed to perform same, any dispute regarding the matter of compensation for such positions is, in the final analysis, best accomplished through direct negotiations between the parties themselves rather than through review by this Board (Third Division Awards 12672, 14966, 15341 and 18638). The parties are hereby so advised.

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.

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Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A.W. Pauloz
Executive Secretary

Dated at Chicago, Illinois, this 15th day of May 1981.