

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23359  
Docket Number CL-23206

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-8970) that:

(1) Carrier violated the Rules Agreement between the parties including but not limited to DP-526 and Rules 36(a), 36(b), 59 and 62 of DP-451, when at Denison, Texas, it abolished Special Accountant Position No. 43, formerly occupied by Clerk W. E. Schwetke without proper notice and then established the lower rated Position No. 31, Accountant, Corporate Accounting Control, Seniority District No. 4, to perform the higher rated work of the abolished position.

(2) Carrier shall compensate Ms. F. Y. Hardenburg and/or her successors on Accountant Position No. 31, the difference in the rate of pay of the lower rated accountant Position No. 31, \$61.82 daily and the higher rated Position of Special Accountant No. 43, \$65.20 daily, to include any subsequent wage changes for July 17, 1978, and each subsequent work day thereafter on a continuing basis until such time Carrier applies the proper rate to Accountant Position No. 43 on a permanent basis.

OPINION OF BOARD: In July of 1978, the Carrier abolished the Special Accountant position in Corporate Accounting Control because it was "no longer required", and a new position was advertised. That new position (Accountant, Corporate Accounting Control) was awarded to the Claimant and she received a daily rate which was less than the rate paid to the abolished position.

Among the rules cited, the Organization has placed a reliance upon Rule 36(b):

"(b) Established positions shall not be discontinued and new ones created under a different title, covering relatively the same class of work, for the purpose of reducing the rate of pay or evading the application of these rules."

In this regard, the Organization cites one of Carrier's letters of declination, in which it is stated that certain duties listed in the abolished position are included among the duties of the new position. The Carrier asserts that that inclusion is immaterial and irrelevant because for some time the occupant of the prior position was paid to perform work similar to the work of an Accountant receiving the lower rate after the special work for which the position was created and rated had been assigned to the Cost and Research Bureau of the Accounting Department.

The Carrier equates the work in question as more properly the type performed by other Accountants, and insists that there is no need for the Special Accountant position, and states that the Carrier is not required to maintain unnecessary positions. Be that as it may, we are of the view that other considerations control the outcome of the dispute.

We have reviewed the various factual assertions put forward by the Carrier concerning the manner in which the position came into existence and various asserted erosions to the position over the course of time until the incumbent retired in 1978. Nor have we ignored the assertions that the duties of the newly created position are similar to other accounting positions. Nonetheless, we continue to return to Rule 36(b) of the Agreement between these parties. In that regard, our attention has been invited to a recent Award of this Division resolving a dispute between these same parties. Award No. 22775 concerned an abolishment of a cashier position and assignment of certain duties of that position to a clerk position. There, the Board found that the Claimant had been assigned duties which had been assigned to the abolished position, and here the Carrier has conceded that fact. The author of Award No. 22775 determined that after abolishment of the position "... remaining duties must be assigned as the rule requires." It has long been held that when a similar dispute has been resolved between two parties, that resolution should control future similar disputes unless the prior resolution is palpably erroneous; regardless of the manner in which the second Referee might have viewed the original dispute.

We are unable to find Award 22775 to be palpably erroneous, and accordingly we will 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 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 violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

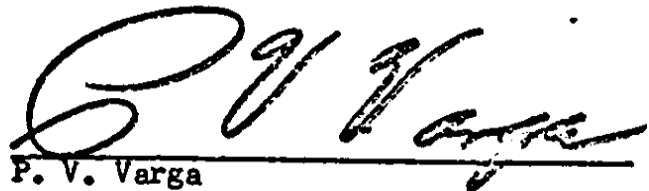
ATTEST: *A. W. Paulsen*  
Executive Secretary

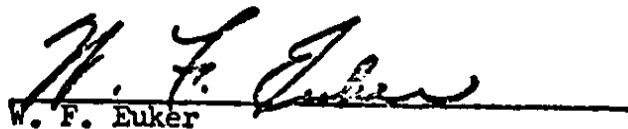
Dated at Chicago, Illinois, this 14th day of August 1981.

DISSENT OF CARRIER MEMBERS  
TO  
AWARD 23359, (DOCKET CL-23206)  
(REFEREE J. SICKLES)

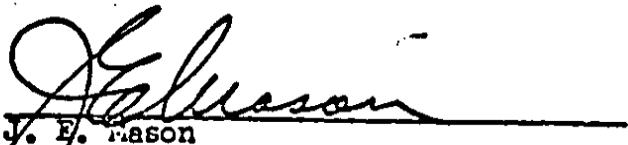
While the Majority has "reviewed" the facts and has not "ignored" that the duties that initiated the creation of the Special Accountant position no longer existed, and therefore there was no further need of that position, the Majority compounded the error of Award 22775 by relying upon it as dispositive in this case.

For the same reasons as were detailed in the Carrier Members' dissent to Award 22775, dissent to this Award is also required.

  
P. V. Varga

  
W. F. Euker

  
D. M. Lefkowitz

  
J. E. Mason

  
J. R. O'Connell