

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23403
Docket Number CL-23251

Martin F. Scheinman, Referee

PARTIES TO DISPUTE:

{ Brotherhood of Railway, Airline and Steamship Clerks,
{ Freight Handlers, Express and Station Employees
(The Chesapeake and Ohio Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-8923) that:

(a) The Carrier violated Rule 1 and others of the Clerical Agreement when it worked a position of Yard Clerk, Gladstone, Virginia, in excess of four (4) or more hours for the majority of the days in a week.

(b) That the Carrier now reestablish Position C-17, Yard Clerk and a joint check be made of the Carrier's records to determine the proper claimant and said claimant be compensated at the pro rata rate of \$57.70 retroactive to August 28, 1978, and continuing until such time the claim is settled as presented.

OPINION OF BOARD: The Organization contends that Carrier violated the Agreement when it worked a position of Yard Clerk in excess of four (4) hours a day without reestablishing this position. That is, in the Organization's view, Carrier abolished the position of Yard Clerk, C-17 and continued to work this shift by means of overtime and rescheduling in violation of Rule 1(e) of the Agreement. The Organization seeks the reestablishment of C-17 and that the resultant Claimants be compensated at the pro rata rate of \$57.70 retroactive to August 18, 1978.

Rule 1(e) states:

"Where a position is worked 4 hours or more for the majority of the days in a week with any degree of regularity, a clerical position shall be established in accordance with the provisions of this agreement."

Carrier has the right to abolish a position when there is a decrease in the volume of work to warrant it. On this there can be no dispute. For example, see Third Division Award No. 20726 where we stated:

"We certainly find no fault in that reasoning....However, on numerous occasions the Board has also held that management has the inherent right, in that absence of legal or contractual prohibitions, to abolish or rearrange the work of positions (Awards 13933, 14738, 9806, 14493, 20355, et al)."

In order for this claim to prevail, it is incumbent upon the Organization to show that the shift was worked for four (4) or more hours, that this occurred a majority of days in a week, and that it occurred with any degree of regularity. Absent such evidence, there is simply no basis for determining that Carrier must reestablish this position.

While the Organization has introduced numerous contentions to support its position, the fact remains that there are no grounds to prove that Carrier's action was a violation of the Agreement. The requisite proof is simply not in the record. For example, the requirement of regularity is clearly wanting. Without such proof, the claim must be denied.

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. Paulsen

Executive Secretary

Dated at Chicago, Illinois, this 6th day of October 1981

