

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24182
Docket Number CL-23785

Martin F. Scheinman, Referee

PARTIES TO DISPUTE: { Brotherhood of Railway, Airline and Steamship Clerks,
Freight Handlers, Express and Station Employees
(Northwestern Pacific Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9295) that:

(a) The Northwestern Pacific Railroad Company violated the current Clerks' Agreement when it abolished Rate and Revising Clerk Position No. 26, Santa Rosa, California, hours 12:01 a.m. - 8:01 a.m., Rest Days Saturday and Sunday, rate of pay \$42.46 per day, and then established Position No. 7 Assistant Cashier, with the same hours, rest days, and duties as formerly assigned to Position No. 26 when abolished, but with a lesser rate of pay, \$41.59 per day.

(b) The Northwestern Pacific Railroad Company shall now be required to allow Mr. S. R. Tuttle, Assistant Cashier, Santa Rosa, his substitutes and/or successors, an additional \$.87 per day each date June 12, 13, 16, 17, 18, 19, 20, 23, 24, 25, 26, 27, 30, July 1, 2, 3, 4, 7, 8, 9, 10, 11, 14, 15, 16, 17, 18, 21, 22, 23, 24, 25, 28, 29, 30, 31 August 1, 1975.

OPINION OF BOARD: Carrier abolished twelve positions at its Santa Rosa, California facility on February 7, 1975. The abolishment occurred account of "decline in business", under the provisions of Article II, Section 11 of the Agreement. As a result of an improvement in business, twelve positions were established in June and July of 1975 by the Carrier. One of the abolished positions (No. 26, Rate and Revising Clerk) was bulletined as an Assistant Cashier position (No. 27) with a reduction in pay of \$.87 per day (position No. 26 paid \$42.46 per day; position No. 27 paid \$41.59 per day). It is agreed by both parties that the duties of Rate and Revising Clerk are similar to those of Assistant Cashier.

The Organization maintains that the creation of Position No. 27 violates Rule 6 of the Agreement. Rule 6 states:

"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."

According to the Organization, the violation of Rule 6 is clear. Carrier created a new position with similar duties to an abolished one. Since the new position was at a lower rate of pay than the former one, Rule 6 has been violated. It insists that Claimant, S. R. Tuttle, Assistant Cashier, Santa Rosa, for his substitutes and/or successors, is entitled to an additional \$.87 per day for the days listed in the claim.

Carrier, on the other hand, insists that Rule 6 is not applicable to this case. It argues that Article II, Section 11 covers the abolition and/or recreation of positions for business reasons. It points out that it fully complied with this Article. Accordingly, the Carrier asks that the claim be dismissed.

Article II, Section 11 states:

"SECTION 11 - In the event of a decline in a Carrier's business in excess of 5% in the average percentage of both gross operating revenue and net revenue ton miles in any 30-day period compared with the average of the same period for the years 1968 and 1969, a reduction in permanent positions and employees may be made at any time during the said 30-day period beyond the operation of attrition as referred to in Section 12 of this Article to the extent of one percent for each one percent the said decline exceeds 5%. The average percentage of decline shall be the total of the percent of decline in gross operating revenue and percent of decline in net revenue ton miles divided by 2. Five (5) working days advance notice of any such force reduction shall be given. Upon restoration of a carrier's business following any such force reduction, an appropriate number of positions will be re-established and employees entitled to preservation of employment must be recalled in accordance with the same formula within 15 calendar days. The provisions of this Section will not apply to Pacific Lines employees in the San Francisco General Offices with seniority date of March 16, 1963 or earlier or to St. Louis Southwestern employees subject to surplus arrangement under Section 5 of this Article with seniority date of March 16, 1963 or earlier; or to Texas and Louisiana Lines employees with Seniority date of July 17, 1963, or earlier."

The central issue here is whether Rule 6 applies to the facts of this case. After analyzing the record, we believe that rule does apply to the facts presented.

Rule 6 is clear and unambiguous. It covers all situations of positions which are abolished and then recreated. Nothing in its terms distinguishes between positions abolished and recreated for decline of business reasons as opposed to other reasons.

Carrier argued that a special rule (Article II, Section 11) should prevail over a general rule (Rule 6). It also cited numerous awards to that effect. However, a special rule should prevail over a general rule only when the two are in conflict. Here, nothing in Article II, Section 11 conflicts with Rule 6. Carrier is obligated to live up to both provisions.

In addition, awards cited by the Organization tend to support its claim particularly 23359 and 1773. We will sustain the claim as presented.

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.

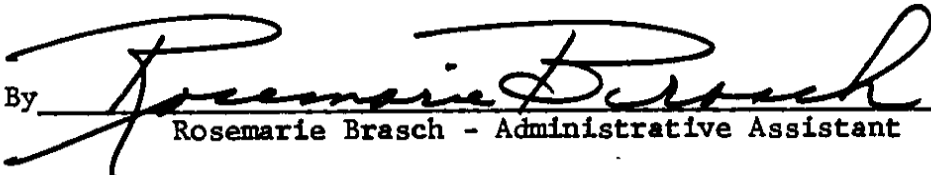
A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 28th day of February 1983.