

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24883
Docket Number CL-24922

Marty E. Zusman, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees

PARTIES TO DISPUTE: (
(The Chesapeake and Ohio Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9682)
that:

(a) The Carrier violated the Clerical Agreement, Rule 37 and others when they required Mr. L. C. Willhide incumbent of position A-135 (Guaranteed Rate of \$58.69 per day) to assist W. R. DeSandro incumbent of position E-8 (Rate of pay \$1620.88 per month) and did not allow Mr. Willhide the rate of \$1620.88 per month on Feb. 25 and Feb. 28, 1977, and

(b) The Carrier should now allow Mr. L. C. Willhide \$53.24 in addition to any other compensation allowed him for Feb. 25 and Feb. 28, 1977, due to this violation of the BRAC Agreement rules.

OPINION OF BOARD: There is no dispute between the parties that Claimant L. C. Willhide was properly rearranged from his regular assignment on February 25th and 28th, 1977 to Reclaim Clerk positions and in his assigned duties completed in part numerous CF-335 forms under Rule 21 of the Code of Car Hire Rules. The Organization argued that Claimant Willhide had "assisted" a higher rated E-8 position, Supervisor of Mileage and Per Diem Section and therefore was due the higher rate of pay under Rule 37 which reads in pertinent part:

"RULE 37 - ABSORBING OVERTIME

An employee assisting another employee on a position paying a higher rate will receive the higher rate for time worked while assisting such employee, except that existing rules which provide for payment of the highest rate for entire tour of duty will continue in effect."

During the progression of this claim on property the Carrier by letter of March 9, 1978 stated that "The work he performed is properly assigned to his position and is no more than any other Reclaim Clerk position would do to recover money due the Chessie System. He did not perform any duties exclusively assigned to Position E-8." In response by letter of March 29, 1978, the Organization took absolute exception and stated that "Reclaim Clerks have never been assigned any of the work involved in the handling of so-called 'Rule 21 claims.' The Reclaim Clerks are only assigned work of handling per diem reclaims under Rules 5, 14, 15, 22 and special reclaims as evidenced by the job sheets for such positions."

The Board finds that the case at bar centers on whether Claimant was requested to do higher rated work. In the mind of this Board if the Claimant in his rearranged assignment performed a type of work required of an incumbent of the E-8 position or assisted in the performance of such higher rated work, he is due compensation. The weight of the evidence for any claim is the responsibility of the moving party. The evidence which was presented by the Organization on property failed to substantiate that the type of work performed by the Claimant in the processing of CF-335 forms was neither a special reclaim, nor a type of work either inconsistent with activities of the other five Clerk positions or exclusively and historically the responsibility of the E-8 position. It is the determination of this Board after a careful and thorough review of the instant case that the burden of proof has not been met and absent therefore such proof, this Board will not disturb Carrier's decision in the case at hand.

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

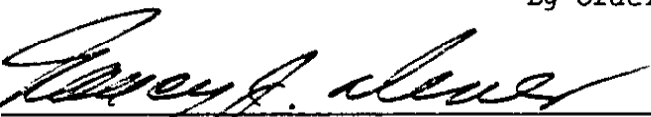
That the Agreement was not violated.

A W A R D:

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 28th day of June, 1984