

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24886
Docket Number MS-24974

Marty E. Zusman, Referee

(Paul L. Rush

PARTIES TO DISPUTE:

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(Illinois Central Gulf Railroad Company

STATEMENT OF CLAIM: Claim of Paul L. Rush in that:

1. Company violated the Clerks Agreement effective October 9, 1980, and has continued to violate the agreement each day thereafter, when it abolished Utility Clerk Position 100, at Johnston Yard, Memphis, Tennessee, in the Yard Office, in violation of Rule 16, among other rules of the agreements, which resulted in claimant Rush being illegally displaced from his regular position of Timekeeper, RH-72.

2. Company shall now be required to compensate Clerk P.L. Rush a day's pay at the rate of Position RH-72, in the amount of \$75.50 per day, beginning October 9, 1980, and continuing for each work day thereafter, until Claimant Rush is returned to his regular Position RH-72.

OPINION OF BOARD: Claimant Paul L. Rush argues that Company violated Clerk's agreement when it abolished Utility Clerk Position 100 by failing to abide by Rule 16 which reads in pertinent part as follows:

"RULE 16 - REDUCTION IN POSITIONS

"(b) Subject to paragraph (c) of this rule, in effecting a general reduction in clerical forces in an office or department, if two or more clerks are performing the same or similar work, the lowest rated position in such group (or if all are rated the same, the job held by the junior employee) shall be the first cut off. If no such groups or positions exist, the lowest rated clerical position in the office or department affected will be cut off provided the efficiency of that office would not be impaired by so doing.

(c) any position may be abolished when the major portion of its work or requirements is no longer needed."

The issue in the instant case is whether the Company in abolishing Position 100 was subject to Rule 16(b) or Rule 16(c). Claimant Clerk Paul L. Rush maintains the company was subject to Rule 16(b) and he has been denied his rights under the Agreement in force. If the Company was subject to Rule 16(c) then it operated in accordance with the Agreement and engaged in no violation.

It is the responsibility of the moving party to document by evidence any said violation and in the instant case such clear and convincing evidence is lacking. In the case at bar a careful review of the record indicates that Rule 16(c) is the controlling rule and was correctly applied. This is consistent with past Awards of the National Railroad Adjustment Board (Third Division Awards 11793, 14701, 24011). Absent, therefore, evidence that the actions of the Company were inconsistent with the controlling sections of the Agreement, this Board denies the claim as having no merit.

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

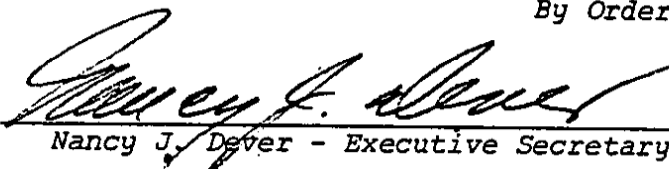
That the Agreement was not violated.

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