

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25109  
Docket Number CL-25125

John E. Cloney, Referee

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

PARTIES TO DISPUTE:

(  
(Missouri Pacific Railroad Company

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood (GL-2729) (sic)  
that:

1. Carrier violated the Rules Agreement between the parties, in particular Rule 2, Paragraph (h)2. and Rule 31(b), when it abolished the only position assigned at Batesville, Arkansas; namely, Star Agent No. 072, and established in lieu thereof the position of Telegrapher-Clerk No. 021 at a lower rate of pay than provided for in the Agreement. (Carrier's File 380-3518).

2. Carrier shall now be required to compensate S. W. Waddell for the difference in rate of pay between that of \$74.68 per day and \$82.27 per day; each assigned work day Monday through Friday beginning July 21, 1980 and continuing until the violation here involved is corrected.

OPINION OF BOARD: The Carrier had maintained a Star Agent at Batesville, Arkansas for at least fifty years prior to July, 1980 and for several years before that date this was the only remaining position at the Station.

The parties Agreement, Rule 2, effective March 1, 1973 states in part:

"(2) The following agency positions will remain Star Agency positions as long as the present incumbents remain assigned to said positions, but when the present incumbents are separated...for any cause, including... death...said position will become subject to all the rules of the consolidated Agreement, except this Rule 2, and the daily rate of \$44.41 will apply, subject to subsequent general wage adjustments."

These were 6 day a week positions. Most other positions were 5 days a week. The Organization sought to have all positions 5 days and this provision was a result of compromise. Batesville was one of the Agency positions covered by this portion of the Rule.

When this agreement was negotiated the Star Agent at Batesville was Huddleston. He became ill and the position was bulletined as Temporary in April, 1973 and Kendrick was temporarily assigned the position. In July, 1973 Huddleston passed away. The Carrier asked to retain the Star Agent six day a week position at Batesville. The Organization agreed. The position was bulletined and R. J. Richardson was assigned on August 24, 1973.

On February 7, 1980 the Carrier filed a petition with the Arkansas Department of Transportation for discontinuance of the Agency Station. It later amended this petition to request elimination of the Agent's position, with the work to be handled by a Telegrapher-Clerk. On June 30, 1980 the Commission granted the application noting the Carrier must obtain approval if it subsequently decided to eliminate the agency station or depot. By Bulletin of July 9 the Carrier abolished the Star Agent position effective July 19, 1980 and on the same date advertised a Telegrapher-Clerk position at Batesville. The Telegrapher-Clerk position pays less than the Star Agent position.

Richardson remained Star Agent at Batesville until the position was abolished. He had become ill prior to July 9, 1980 and the position was being worked by Claimant Shirley Waddell. On July 14, 1980 Richardson passed away and on July 23, 1980 Waddell was assigned to the position Telegrapher-Clerk.

The Agreement, Rule 31 provides in part:

"(a) The rate of pay of new positions will be in conformity with the rates of analogous positions of similar kind and class.

(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."

The Organization contends the newly created Telegrapher-Clerk position performs relatively the same function as had been performed for years by the Star Agent and insists the Carrier's action violated Rule 31(b).

The Carrier contends the position is a new one within the meaning of 31 (a) and that the rate was set in compliance with that Article.

When the Star Agent position was bulletined in July, 1973 its major duties were described as "Prepare switch lists, handle train orders, agency work and other related duties".

When the Telegrapher's position was bulletined the duties were said to be "Check yard, copy train orders, OS & D, PIs prepare switching lists and other related duties".

The Carrier states changes in the nature of the work has eliminated the need for a Star Agent at Batesville and argues that Rule 2 does not guarantee the incumbent of a star agency a position for life, noting star agencies with incumbents have been closed without objection. The Carrier further contends an employee was required at Batesville and accordingly it elected to retain the Station as long as Richardson was there, though no agency work had existed for "some years". The Carrier concedes that when a Star Agent is the last employee at a Station he performs all the work connected with the Station.

The Organization agrees some Star Agent positions have been abolished without its objecting, claiming those situations were bona fide instances of abolishing positions while here the Carrier merely changed the rate of pay under the guise of abolishing a position.

The Board notes that contrary to the Carrier's contentions, the State of Arkansas did not grant permission to close the Station. Rather it allowed elimination of the Agent's position. Be that as it may we have frequently held orders of State Regulatory Agencies do not authorize violation of the rules of the parties' agreements. The issue in this case is not whether the Carrier had a right to close the station or abolish the Star Agency position but rather whether the agreement has been violated. A principle applicable to this case is stated in Third Division Award No. 731 and often quoted thereafter:

"In numerous cases this Board has held that a Carrier has the absolute right to abolish any position in an Agreement, provided the duties of the position are in fact abolished. In an equally long line of cases the Board has held that the Carrier does not have the right, under guise of abolishing a position, to transfer the duties of the position to someone else not under the agreement."

While the duties here were not assigned to someone not covered by the Agreement the principle is of assistance in consideration of the question of applicability of Rule 31.

When Rule 2 was negotiated the Batesville incumbent was Huddleston. He passed away shortly thereafter at which time the position became subject to all Rules of the Agreement except Rule 2. However at the Carrier's request the Organization agreed to allow the position to remain as a Star Agent position. (The request apparently was granted because this was even then the only position at Batesville.) Thus the Carrier is not really correct in asserting "Richardson was the incumbent on the Star Agency position at Batesville in the application of the rule". We also note the Carrier's application to the Arkansas Department of Transportation was made before his illness and death, despite the Carrier's contention that it "did not move to eliminate Batesville as an agency under Arkansas Law until Clerk Richardson laid off sick...".

The Organization claims that with the possible exception of some accounting duties, work performed by the Claimant is the same as that which had been performed by Richardson for the past few years. The available information indicates that to be true. The Carrier's request several years ago that Rule 2 be allowed to apply because there was only one employe remaining, its position that there had been no need for a Star Agent for several years, and that the incumbent of the position performed all work connected with the Station in such situations, all suggest the nature of the duties haven't changed greatly since Richardson was awarded the position although the volume may have.

In dealing with rules similar to Rule 31(b) the Board has held it is not necessary "the duties of a newly created position be identical with those of a discontinued position". The focus of the Rule is on whether "relatively the same class of work" is performed. (Award No. 1773)

In the opinion of this Board Rule 31(b) applies to the position in question and was violated.

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

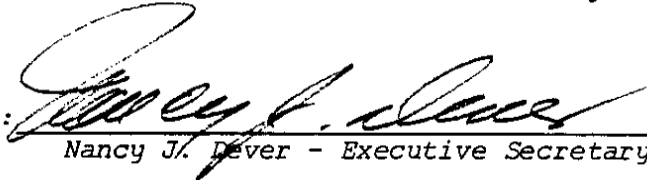
That the Agreement was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 9th day of November 1984.



DISSENT OF CARRIER MEMBERS  
TO  
AWARD 25109 (DOCKET CL-25125)  
(Referee Cloney)

The Majority opinion in this case follows the logic and reasoning expressed by the Opinion of the Board in Third Division Awards 731 and 1773. The facts and Carrier's position in this case were given no more consideration than was given the Carriers' positions when Awards 731 and 1773 were issued.

Award 731 involved the abolishment of an Assistant Agent position at Paducah, Kentucky. The issue, according to the Employees in that dispute, was the abolishment of a position covered by the Telegraphers' Agreement and the reassignment of the work of the abolished position to the non-covered Agent position at Paducah. The record in that case indicated that the Assistant Agent position was established to perform supervisory functions that obviously overflowed from the non-covered Agent position. When the business at the Paducah station fell off to the point that the Agent no longer needed supervisory assistance, the Assistant Agent position was abolished and the supervisory functions were reassigned to the non-covered Agent from whence they had originated. It should appear obvious that the ebb-flow principle applied in Award 731. The case should have been denied even under the economic conditions that existed at the time the Award was adopted. It most certainly did not deserve precedential value given it in the instant case.

Award 1773 has even less logic or principle for support. The facts and the Carrier's position were clearly presented to the Board and indicate there again the facts and contentions of the Carrier were ignored.

The record of the case covered in Award 1773 indicates that the Chief Engineer was scheduled to retire May 1, 1941, and on the same date the Engineer, Maintenance of Way, was to be promoted to the Chief Engineer position and the two office forces consolidated. The retiring Chief Engineer's secretary was also retirement age (65) and asked that he be permitted to retire effective May 1, 1941. The position of secretary to the Chief Engineer was a monthly rated job, \$190.00 per month, based on all service rendered seven days per week.

It developed that over the years the retiring secretary to the Chief Engineer had been performing duties in connection with files, keeping records, as well as preparing vouchers, reports covering AFE's, recording deeds and completing reports, in addition to keeping bridge records and doing miscellaneous clerical and secretarial work. The Carrier requested the retiring secretary to the Chief Engineer to remain on active status in order to untangle the work that he had been performing, allocating the work between the various clerical positions that were to be retained in the Chief Engineer's office following the consolidation. The retiring

secretary to the Chief Engineer agreed to remain temporarily; therefore, effective May 1, 1941, his position was titled Head File Clerk; but he retained his salary of \$190.00 per month as Secretary to the Chief Engineer.

The retiring secretary to the Chief Engineer completed his assignment in a little over one month and notified the Carrier that the duties had been allocated to other clerical positions and that he would retire effective July 1, 1941. The Carrier then established a file clerk position to perform the file and record work that remained and rated the new position \$5.50 per day, which was the highest rate the Carrier had for a file clerk; and advertised the position on June 20, 1941 to be effective July 1, 1941--the date the retiring secretary to the Chief Engineer was scheduled to leave.

The Organization objected to the \$5.50 rate. They argued that a new position had been established with a lower rate and insisted that the rate of \$7.45 be assigned to the position. There was nothing in the record indicating how the Employees arrived at the \$7.45 per day rate of pay. The Carrier was not agreeable to raising the rate to \$7.45 per day, which was a rate much higher than had been established for file clerks. The Carrier pointed out that even the \$190.00 per month rate of the Secretary to the Chief Engineer reduced to a daily rate ( $\$190.00 \times 12 \div 365 = \$6.25$  per day) would not produce the rate proposed by the Employees. However, the

Board rejected the Carrier's facts in holding that the file clerk position performed "relatively the same class of work" that was performed by the head file clerk--notwithstanding the fact the "head file clerk" was established in title only as a temporary position less than two months prior to the bulletin in order to carry the retiring secretary on the timeroll.

The Board in responding to the Carrier's figures relative to the rate of pay gave it very little consideration in holding:


"We find no merit in carrier's contention that the old monthly rate converted into a daily rate would produce only \$6.25 per day."

The end result of the Award was that the Employees succeeded in raising the rate of a position to a rate higher than the rate allowed the Secretary to the Chief Engineer who had greater responsibility.

There have been many awards of this Board that have recognized that an award is no better than the reasoning that supports its conclusion. The reasoning in Awards 731 and 1773, and used by the Majority in this Award, was totally lacking in logic and neither Award deserved recognition by the Board in the instant case.

In this case, it appears Award 25109 has ignored past practice on this property of reclassifying agency stations to non-agency train order stations. (Guion and Pinckneyville were only two examples.)

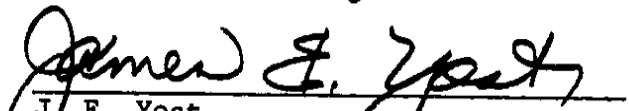
For the reasons expressed herein, we cannot accept Award 25109 as having any more precedent value than Awards 731 and 1773. The Carrier is placed in a Catch-22 situation in view of the fact that in this case the Majority ignored past practice of reclassifying agency stations to train order stations as the record indicates was done in the case of Guion, Arkansas, and Pinckneyville, Illinois--without objection from the Employees. The only value we can determine from this Award is as an example for the State Commission of its efforts to afford the Carrier some relief to effect economies in its operation, and at the same time reserve something for the Employees.

  
J. R. O'Connell

  
W. F. Eaker

  
T. F. Strunck

  
P. V. Varga

  
J. E. Yost