

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25327
Docket Number CL-25279

Eckehard Muessig, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
(
(Chicago, Milwaukee, St. Paul and Pacific Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9789)
that:

1) Carrier violated and continues to violate the Clerks' Rules Agreement at Milwaukee, Wisconsin when it abolished Revising Clerk Grade B, Position No. 87330, on January 12, 1982, and concurrently therewith established Interchange Clerk Position No. 09810, performing the same duties as the abolished position, but at a lesser rate of pay.

2) Carrier shall now be required to compensate Employee G. Fargen, the successful applicant of Position No. 09810, the difference between the rate of Position No. 87330 and Position No. 09810, retroactive to date of assignment of this position and continuing thereafter until the proper rate of Position No. 87330 (subject to any salary or wage adjustment appropriate thereto) is re-established.

3) The successor or successors, if any, of the above-named employee shall be compensated in like manner.

OPINION OF BOARD: On January 5, 1982, the Carrier issued Bulletin No. 1 in which Revising Clerk, Grade B, Position No. 87330 in Seniority District No. 4, was abolished, effective on January 12, 1982. This Bulletin also stated that: "The abolishment of the position coincides with the establishment of Position No. 09810 advertised on Bulletin No. 2 of 01-05-82".

Bulletin No. 2 was issued for the stated reason of advertising a "new position". It also indicated that: "The establishment of this position coincides with the abolishment of Position No. 87330 Rev. Clk. Gr. B. on Bulletin No. 1 of 01-05-82".

On January 21, 1982, the Carrier issued Bulletin No. 27, awarding Position No. 09810 to the previous incumbent of Position No. 87330, the Claimant herein.

The thrust of the Organization's contention is that the new position is essentially the same as the one which was abolished and, therefore, a violation of the agreement has occurred. To reach this conclusion, it cites and relies primarily on Rule 19, which, in pertinent part, reads:

"Established positions shall not be discontinued and new ones created under a different title covering relatively the same class of work which will have the effect of reducing the rate of pay or evading the application of these rules."

The Organization argues that when the Carrier created Position No. 09810, it retained "relatively the same class of work". To support this assertion, the Organization relies on a Carrier letter of December 11, 1981, which it contends shows Carrier's intent to include the duties of the abolished position within Position No. 09810. In summary, the Organization maintains that at issue here is the discontinuance of an established position and the creation of a new position under a different title to perform the same class of work, but at a lower rate of pay.

At the outset, the Carrier raises a threshold issue, contending that the claim is on behalf of unnamed and unknown individuals and, thus, it is improperly before this Board.

On the substantive matters of this dispute, the Carrier relies upon Rule 18 of the Agreement which, in pertinent part, reads:

"RULE 18 - RATES - NEW POSITIONS

The rates for new positions will be in conformity with rates for positions of similar kind or class in the seniority district where created. In the absence of a similar position in the district, the rate of pay for the new position will be established by agreement between the Assistant Vice President-Labor Relations and the General Chairman."

It asserts that Position No. 09810 was established in conformity with the rate of an existing Interchange Clerk Position in the Operating Department at Green Bay, Wisconsin, and, therefore, its actions are not violative of the agreement.

In summary, the Carrier submits that this claim represents Organization's request for a reclassification and an increase in the rate of pay and that such matters clearly are not within the scope of this Board's authority.

With respect to the procedural contentions of the Carrier, we find that, while these are not without merit under certain circumstances, under the facts of record herein, the Organization's claim has met the essential requirement of Rule 36.

Concerning the merits, we have very carefully reviewed the submissions and the numerous awards provided by both parties to arrive at our finding. Certainly, this Board would reaffirm that it lacks authority to reclassify positions or fix pay rates. However, while the Rule 18 argument by the Carrier is understood, to arrive at the essential issue of this dispute, it is first necessary to make a finding on whether the position advertised by Bulletin No. 3 contains "relatively the same class of work". If it does, it falls within the purview of Rule 19, as asserted by the Organization.

The Board finds substantial facts of evidence that provide substance to the Organization's contentions. The December 11, 1981 letter clearly states when referring to Position No. 87330 that "these duties will be accomplished by the *** Yard". The pertinent Bulletins were cross-references. These facts all lead to a reasonable conclusion that the "old and the new" are essentially the same position.

Moreover, while it is recognized that certain duties have been described in Bulletin No. 2 that perhaps vary from those of the positions abolished by Bulletin No. 1, the duties of the latter position required normal working hours. Thus, the facts are that the Carrier moved these duties, as evidenced by its letter, the contents of which it never refuted. The facts also lead to a reasonable conclusion that these duties would be controlling in the new position, in view of the full-time nature of the job activities.

Accordingly, Parts 1 and 2 of the claim are sustained. Part 3 of the claim is not relevant to the role of the Board.

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

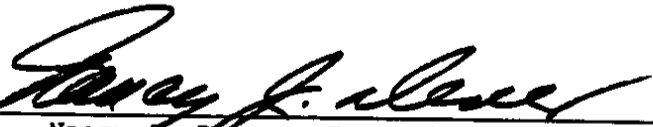
That the Agreement was violated.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy S. Dever - Executive Secretary

Dated at Chicago, Illinois, this 15th day of March 1985.