

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25425
Docket Number CL-25340

John E. Cloney, Referee

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

PARTIES TO DISPUTE:

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(Chicago, Milwaukee, St. Paul and Pacific Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9806)
that:

1) Carrier violated the provisions of the Clerks' Rules Agreement at Milwaukee, Wisconsin, Seniority District No. 4, on various dates between November 30 and December 18, 1981, when it improperly compensated Employee M. R. Clendenning after assigning him Control Center duties.

2) Carrier violated and continues to violate the provisions of the Clerks' Rules Agreement at Milwaukee, Wisconsin, Seniority District No. 4, on December 28, 1981, when it improperly compensated Employee M. R. Clendenning after assigning him Control Center duties.

3) Carrier shall now be required to compensate Employee M. R. Clendenning the difference in rate between his Position No. 08900 and No. 07500 for November 30, December 1, 2, 3, 4, 7, 8, 9, 10, 11, 14, 15, 16, 17 and 18, 1981.

4) Carrier shall now be required to compensate Employee M. R. Clendenning the difference in rate between his Position No. 08900 and No. 07500 for December 28, 1981 and all subsequent dates until the violation is corrected.

OPINION OF BOARD: Claimant M. R. Clendenning is the regularly assigned Yard Clerk in Position No. 08900 with a rate of pay of \$83.1624 per day at Grand Avenue Control Center, Milwaukee, Wisconsin.

The Organization contends, and the Carrier does not deny that:

"Prior to November 30, 1981 the keeping of I.B.M. inventory in the industrial Control Center and operation of I.B.M. equipment was performed by Position 07500 at Muskego Yard. The rate of pay applicable to Position 07500 for the performance of these duties was \$84.7224 per day. The duties assigned to Position 07500...resulted in the assignment of the rate of pay to Position 07500... .

On November 30, 1981, the Carrier had installed at the Grand Avenue Control Center the machinery and equipment necessary for the keeping of the I.B.M. inventory...The Carrier concurrently transferred the work previously performed by the incumbent of Position 07500 at Muskego Yard to Claimant...at the Grand Avenue Control Center..."

The Organization contends Rule 17 - Preservation of Rates, requires Claimant be compensated at the higher rate. The Parties agreed the two claims filed by the Organization would be combined for Submission.

The Rule involved states:

"RULE 17 - PRESERVATION OF RATES

(a) Employees temporarily or permanently assigned to higher rated positions shall receive the higher rates while occupying such positions; employees temporarily assigned to lower rated positions shall not have their rates reduced.

(b) An employee temporarily assigned by proper authority to a position paying a higher rate than the position to which regularly assigned for four (4) hours or more in one day will be allowed the higher rate for the entire day. An employee temporarily assigned by proper authority to a position paying a higher rate of pay for less than four (4) hours in one day will be paid the higher rate therefor on the minute basis.

(c) A 'temporary assignment' contemplates the fulfillment of the duties and responsibilities of the position during the time occupied, whether the regular occupant of the position is absent or the temporary assignee does the work irrespective of the presence of the regular employee. Assisting a higher rated employee due to the temporary increase in the volume of work does not constitute a temporary assignment."

The Carrier maintains Claimant is and was a Yard Clerk doing Yard Clerk work and receiving Yard Clerk's pay. It argues Rule 17 contemplates an assignment to a higher rated position on a temporary or permanent basis and further contemplates the employee occupy the position to which he is assigned. It insists Claimant was not assigned to a higher rated position, but rather remained in his regularly assigned Yard Clerk position and never occupied any position other than his own. In short the Carrier argues that movement to a different position or classification is necessary. In its view there was no such movement, nor was there an "occupying" of a different position. Accordingly it sees the claim entirely as an attempt to obtain an increase in the negotiated rate which the Board is not empowered to grant. We agree this Board lacks authority to change rates of pay or to reclassify positions. However, we believe the Carrier misreads Article 17 and places an entirely too narrow interpretation upon it. The Carrier admits it is not unusual for Yard Clerks to have different rates of pay on the same property. It believes finding for the Claimant would constitute a Board ruling that all should have the same rate. In our view the fact that rates vary is persuasive in Claimant's favor. We noted earlier the lack of disagreement regarding the shifting of duties from Position 07500 to Claimant, or with the assertion that the rate of pay of Position 07500 resulted from those duties. Had Claimant been assigned to Position 07500 the Carrier would presumably agree Rule 17 applied. Instead, the duties of the higher rated Position 07500 were transferred to Claimant's assigned position. We believe this is a distinction without a difference -- at least a difference cognizable by Rule 17. This Board has frequently noted in Preservation of Rates controversies that an employee need not perform all of the duties of the higher rated position, Award Nos. 20038, 17170 but "It is enough that the duties performed are duties of the higher rated position." Award No. 14681. We find that test is met here.

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

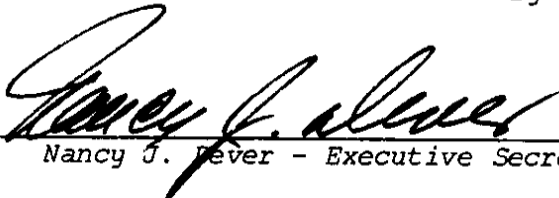
That the Agreement was violated.

A W A R D

Claims sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 30th day of April 1985.