

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr., when award was rendered.

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
PARTIES TO DISPUTE: (
(The Atchison, Topeka & Santa Fe Railway Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood
(GL-10133) that:

(a) Carrier violated the current Agreement when it abolished Tie Aligning Machine Operator Position Nos. 7103 and 7139 with an hourly rate of pay of \$11.93 and reestablished Lift Truck Helper Position No. 7083 and 7170 with an hourly rate of pay of \$11.34 and required to perform essentially the same duties, and

(b) Claimants L. Orozco and J. Esparza, occupants of Position Nos. 7083 and 7170, respectively, and their successor(s) shall now be compensated, in addition to any payment already received, the difference in the rate of \$11.93 per hour and \$11.34 per hour, commencing October 9, 1985, and/or their successor(s) as long as this violation continues, and

(c) Lift Truck Helper Position Nos. 7083 and 7170 at Somerville shall now be rerated and retitled in line with the higher rated duties and responsibilities."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

This dispute arose when the Carrier abolished Tie Aligning Machine Operator Position Nos. 7103 and 7139 (hourly rate \$11.93) and reestablished Lift Truck Helper Position Nos. 7083 and 7170 (hourly rate, \$11.34) on October 9, 1985. The Claimants herein occupied the former positions and were the successful bidders on the latter positions. Their claim, in part, is that they should be compensated at the higher rate commencing October 9, 1985.

The Carrier, in the on-property handling of the Claim, did not address the arguments of the Organization that the Claimants continued to be required to perform the duties of the higher rated position after they were assigned to the lower rated positions. Instead, the Carrier argued that the claim was deficient in failing to provide sufficient information at the initial step. The Board does not agree. The claim was specific in alleging that the abolished positions were "reestablished at a lower rate", citing a number of agreement rules. The Carrier was readily aware of the identity of the occupants of these positions. Further, the Organization expanded (but did not change) its contentions in its appeal from the first Carrier reply. The claim may properly be resolved on its merits.

Based on the information provided to the Board as to the period immediately following the position abolishment, it appears that the Carrier acted, at best, on a premature basis. Rule 33 reads as follows:

"RULE 33 -- CHANGING TITLE OR RATE

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 has demonstrated that the Claimants continued to perform the duties of the higher rated position for a substantial portion of their working time. The abolishment of the positions, resulting in the work being performed by employees in a lower rated position (even if paid for the specific hours involved) is thus not found to be appropriate and in violation of Rule 33. In so finding, the Board must necessarily be concerned with the situation as reported by the Organization and not specifically rebutted by the Carrier.

The claim also seeks to have the Lift Truck Helper positions "re-rated and retitled." This is clearly not within the jurisdiction of this Board, and this portion of the claim must be denied. The Board confines itself to consideration of the improper abolishment of the higher rated positions, given the continuation of a substantial portion of the higher rated work.

It is clear the Agreement was violated. Paragraphs (a) and (b) of the Statement of Claim will be sustained; paragraph (c) will be denied.

A W A R D

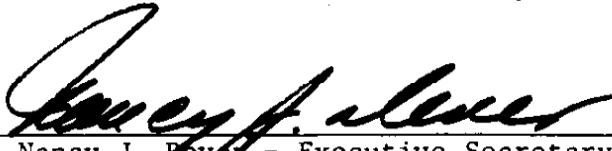
Claim sustained in accordance with the Findings.

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Award No. 27600
Docket No. CL-27467
88-3-86-3-721

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 27th day of October 1988.