

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 30460  
Docket No. CL-29903  
94-3-91-3-281

The Third Division consisted of the regular members and in addition Referee James E. Mason when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International  
( Union  
(  
(Atchison, Topeka and Santa Fe Railway Company

STATEMENT OF CLAIM:

"Claim of the System Committee of the Organization  
(GL-10587) that:

- (a) Carrier violated the current and clear provisions of the current Clerks' Agreement at Chicago, Illinois, beginning April 24, 1989, when it assigned and required Claimant Grayson to perform higher rated Market Support Clerk work and failed and/or refused to increase the daily rate of pay to that of Market Support Clerk positions, and
- (b) Carrier shall now compensate Claimant Grayson the difference between the rate of the Wang Word Processing Technician rate (\$106.70 per day) and the Market Support Clerk rate (\$110.38 per day) commencing April 24, 1989, in addition to any other compensation Claimant may have received for dates under claim."

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.

The Claimant in this case was regularly assigned to a Word Processing Technician position the rate of pay of which was \$104.70 per day\*. By letter dated June 19, 1989, a claim on behalf of the Claimant was initiated by the Organization alleging that:

"Commencing April 24, 1989, Carrier required Claimant Grayson to perform the higher rated duties (inputting 1-2-3 Contracts) previously performed by abolished Market Support Clerk Positions; however, Carrier failed to compensate her the higher rate of the Market Support Clerks' position."

The claim letter went on to contend that Rule 43 - Preservation of Rates was the particular rule of the Agreement which it contended supported its position that Claimant was entitled to the \$110.38 per day rate of pay which had been applicable on the Market Support Clerk positions prior to their abolishment.

The initial claim was denied by the Carrier by letter dated August 15, 1989. The claim was then, by letter dated August 30, 1989, appealed to Carrier's highest appeals officer in exactly the same form and substance as was included in the initial claim letter. No additional argument, evidence or Rule support was added to Organization's position. Carrier by letter dated October 24, 1989, denied the claim as appealed on the basis that:

"Investigation of this claim develops that the inputting of the 1-2-3 Contracts, although previously assigned to Market Support Clerks, was lower rated work. This function is no different that (sic) typing, and therefore, properly assigned to the Word Processing Technician. As you are well aware, with the advent of the Marketing Division Support System computer program, the higher rated duties of the Market Support Clerks were mechanized."

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\* The difference between rate of pay indicated in the Statement of Claim and the rate of pay as referenced elsewhere in the case file is not explained by the parties.

This is the sum total of evidence, argument and Rule support which is found in the case file as developed during the on-property handling of the dispute. There were several subsequent exchanges of correspondence which related by number reference only to the instant claim. However, all of these exchanges of correspondence either referred to time limit extensions or confirmed that discussion had taken place on the claim with no new evidence having been presented. The final such letter was dated May 9, 1991, three days after the claim had been listed with this Board, and confirmed again that conference had taken place on the claim as late as "May 6 and 7, 1991," and concluded with the statement that "you presented no new evidence to change my previous decisions and I, therefore, affirmed my previous decision in each claim." With that, the on-property case file was closed.

When the claim came to the Board, the respective Ex-Parte Submissions contained substantial evidence, argument and rule citation support from both parties which had not been made a part of the on-property handling of this claim. It is a fundamental principle that the parties to a dispute cannot prevail before the Board on the basis of allegations or issues that were not discussed during and made part of the handling of the claim on the property. Section 3, First (i) of the Railway Labor Act requires that all disputes must be "handled in the usual manner" on the property before they may be submitted to the Board. This requirement is jurisdictional. The law requires a minimum of handling which the parties cannot waive. The objective of the Railway Labor Act is to require both sides to a dispute to come together on the property and make a complete, open and honest disclosure of their respective positions in an effort to reach agreement. It is impossible for the parties to comply with the requirements of the Act without disclosing to each other during the on-property handling all of the arguments and contentions specifically relied upon. The Board cannot, and will not in this case, consider issues, defenses and Rule citations not raised and made a part of the case record during the handling of the dispute on the property.

On the basis of the evidence and argument which is properly before the Board, the Organization has contended that Rule 43 supports its position in this case. Rule 43 reads as follows:

**"RULE 43 - PRESERVATION OF RATES**

Employees temporarily 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. 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 whether the temporary assignee does the work irrespective of the presence of the regular employee. Assisting the higher-rated employee due to temporary increase in the volume of work does not constitute a temporary assignment.

NOTE: Rule 43 applies only to position covered by this Agreement and is subject to the provisions of Rule 43."

The contention relative to the applicability of Rule 43 as made by the Organization was rebutted on the property by Carrier's assertion as set forth, supra. It is a fundamental axiom of labor relations that material assertions made on the property by either party to a dispute and not refuted on the property by the other party must be accepted as established fact. It is too late to challenge or otherwise attempt to denigrate such material assertions for the first time before the Board. We must, therefore, accept as fact the assertion of the Carrier as set forth in their October 24, 1989, rejection of the instant claim.

It is well established that the Petitioner in a dispute has the burden of proving by probative evidence and/or convincing argument every essential element of a claim. Unsubstantiated assertions and intimations without supporting proof cannot be accepted by the Board. In this claim, the moving party has not met the burden of proof that the Word Processing Technician position performed any of the work of the abolished Market Support Clerk positions which work established and justified the higher rate of pay which had been allowed on the Market Support Clerk positions. The logic and reasoning as set forth in Third Division Award 15629 is equally applicable in this case. Carrier's position in this case is, therefore, upheld.

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**AWARD**

Claim denied.

**ORDER**

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Dated at Chicago, Illinois, this 13th day of September 1994.