

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30792
Docket No. CL-31021
95-3-92-3-875

The Third Division consisted of the regular members and in addition Referee Robert W. McAllister when award was rendered.

(Transportation Communications
(International Union
PARTIES TO DISPUTE: (
(Elgin, Joliet & Eastern Railway Company

STATEMENT OF CLAIM: "Claim of the System Committee of
the Union (GL-10890) that:

- 1) Carrier violated the effective agreement when it abolished the position of Senior Rate Clerk and thereafter assigned the duties of that position to a position having a lower rate of pay without paying the higher rate for the work performed.
- 2) Carrier shall now bulletin and award Position TR-541 with the appropriate rate of pay and, further, shall compensate Mr. Jay Scott the difference between the rate of TR-541 and that of his regular position for May 1, 1991, and for each date thereafter until such position is awarded in accordance with the effective agreement."

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.

On April 30, 1991, upon the retirement of the incumbent, Carrier abolished Position TR-541, Senior Rate Clerk. At the time it was abolished, Position TR-541 had a daily rate of pay of \$128.15 and was the highest rated position in the Marketing Department. The listed principal duties of this position were:

"Prepare rate analysis and studies and quote rates and divisions in prescribed territories.

Cooperate with Pricing personnel in initiating and filing rate proposals in prescribed territories

Assist in the training and development of rate personnel, including tariff interpretations.

Check agency and foreign line tariffs for EJ&E representation involving prescribed territory.

Assist in updating and compiling EJ&E tariffs as directed.

Handle misroutes, claims, etc., and correspondence pertaining to same.

Have a working knowledge of the Interstate Commerce Act, Ex Parte proceedings, Hawkins Index Digest Analysis and other reference materials.

Other miscellaneous work as assigned."

The Organization asserts a major portion of these duties were assigned to Claimant's Rate Clerk position when the Senior Rate Clerk Position was abolished. Because the Claimant's position has a lower rate of pay, the Organization claims the Carrier is in violation of Agreement Rules 19(b) and 53, which read as follows:

"RULE 19 REDUCING WORK

- (b) When a position is abolished, the remaining work will be assigned to positions with rates equal to or in excess of the rate of the position abolished. If an abolished position is restored with original duties, its former rate, subject to general wage revisions, will be restored."

"RULE 53 PRESERVATION OF RATES

Employees temporarily or permanently assigned to higher rated positions or work shall receive the higher rates for the entire day. Employees temporarily assigned to lower rated positions or work 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 a position is absent or whether the temporary assignee does the work irrespective of the presence of the regular employee."

The Carrier asserts the duties that had been performed by the Senior Rate Clerk justifying the higher rate of pay had disappeared when the railroad industry was deregulated under the Staggers Act. It denies that any of these duties had been transferred to the Claimant. Furthermore, it argues the duties the Organization claims were transferred to the Claimant are routine Rate Clerk duties performed by three other Rate Clerks in the Marketing Department.

We find that this dispute is similar to the issue resolved in Award 18 of Public Law Board No. 3497 involving these same parties. In that dispute, the Carrier abolished an Input/Output Technician (IOT) position and assigned some of its duties (distributing pay checks and filling vacancies of the following shifts) to a Crew Caller, a lower rated position. As in the instant case, the Organization cited Rule 19(b), arguing the remaining work assigned to other positions need not be the basis for the abolished position's higher rate. Public Law Board No. 3497, Award 18 rejected the Organization's argument, holding:

"... In Rule 19(b), we find reference to work relates to work of a particular position. Clearly, an IOT position cannot claim crew calling duties as indigenous to the IOT position. The Organization's position rests upon an overly liberal interpretation of the word work. This Board finds no evidence that the Claimant performed work which was a substantial fulfillment of the work related to the higher rated IOT position."

The record in this case discloses the Carrier identified the work that had been transferred to the Claimant and further asserted these duties were performed by other Rate Clerks. This assertion has not been refuted by the Organization. Significantly, there is no evidence to show any other work has been transferred to his position that might justify the higher rate. Following the precedent established in Award 18, the claim is denied.

AWARD

Claim denied.

O R D E R

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 6th day of April 1995.