

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30871
Docket No. CL-30451
95-3-92-3-462

The Third Division consisted of the regular members and in addition Referee Martin F. Scheinman 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 Brotherhood (GL-10829) that:

(1) Carrier violated the effective agreement when it purportedly abolished Position CHFYD1 (Chief Yard Clerk) while continuing to have the work performed by a position with a lower rate of pay;

(2) Carrier shall now compensate Ms. Catherine Banashak the difference between the rate of Chief Yard Clerk and the lower rated position she was required to exercise displacement to following the improper abolishment of her position."

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.

Claimant's Chief Yard Clerk position was abolished by Carrier effective January 31, 1991. That position paid \$117.04 per day. Claimant displaced into a lower rated position paying \$108.90 per day.

The Organization argues that Claimant continued to perform essentially all of her former duties in the new position except for

preparing payroll for the Gary Agent's office. It insists that on January 24, 1991, Claimant was told by her supervisors that she would continue to perform virtually all of her former duties in the lower paying position.

The Organization claims that Carrier's action was inappropriate. It asks that the claim be sustained.

Carrier, on the other hand, claims that it did not violate the Agreement. It argues that as a result of a labor dispute involving one of its major customers, USX, Carrier made substantial reduction of all craft and non-contract forces. As a part of this reduction 64 out of 200 clerical positions including Claimant's Chief Yard Clerk position were abolished.

Claimant transferred to a lower rated position. Carrier insists that Claimant's former work was transferred to the higher rated position of Head Clerk. In all, the Carrier asserts that the claim is without merit.

We agree that the claim must fail. Claimant did not perform all of the tasks of her former position in the lower paying job. This is undisputed. Also undisputed, and highly significant, is the fact that Claimant was paid the amount claimed every date that she was required to assist the Head Clerk.

Thus, the conclusion is inescapable that Claimant was properly paid the rate of Demurrage Clerk when performing those functions. When doing the additional duties she formerly performed, which are now part of the Head Clerk position, she received the claimed rate.

Thus, we must conclude that the claim is without merit.

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 10th day of May 1995.