

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 31962  
Docket No. CL-32472  
97-3-95-3-386**

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

**(Transportation Communications International Union  
PARTIES TO DISPUTE: (  
(Terminal Railroad Association of St. Louis**

**STATEMENT OF CLAIM:**

**"Claim of the System Committee of the Organization (GL-11160) that:**

**1. Carrier violated the Agreement between the parties, expressly Rule 50 and any associated rules of the TCU Agreement when on May 11, 1994, it transferred the duties of the First Shift Crew Clerk position (CB70), Madison, Illinois, \$118.88 per day to the new Third Shift Crew Clerk position (CB77) rated \$115.04 per day, but refused to transfer the higher rate of pay; with claim commencing on May 11, 1994 and continuing until settled for \$3.84 per day, the difference in rate of pay of the involved positions.**

**2. Carrier shall now be required to compensate Third Shift Crew Clerk, Ms. J. L. Bible, Madison, Illinois, \$3.84 per day commencing May 11, 1994 and continuing until settled."**

**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 were given due notice of hearing thereon.

Claimant is employed as a Crew Clerk with seniority date of August 16, 1969. On May 11, 1994, Claimant held a Crew Clerk position identified as CB77 on the third shift, 11:00 P.M. to 7:00 A.M., Saturday through Wednesday with rest days Thursday and Friday.

On or about the same date, May 11, 1994, Carrier consolidated two first shift Crew Clerk positions preserving the higher rate of pay paid to the first shift Crew Clerk for marking the "Mechanical Board" which generates the basic payroll records of Mechanical Department employees. In addition, Carrier extended the higher rate from five to seven days per week on the remaining first shift position.

The record before the Board reveals that the higher rate of pay paid the first shift Crew Clerk position came about on June 1, 1986 due to the incorporation of the Mechanical Department's personnel board into the first shift crew board office. The Mechanical Board is still marked on the first shift.

The Organization argues that work of the abolished first shift position was transferred to the third shift Crew Clerk position CB-77 and, therefore, Claimant is entitled to the higher rate of pay paid on the first shift, citing Rule 50 as supporting its position.

#### **"RULE 50 NEW POSITIONS**

The rate of pay for new positions will be in conformity with the rates of pay of analogous positions (of similar kind and class) in the seniority district where created. In the event there are no analogous positions, the rate of pay of the new position will be established by negotiation between the parties signatory hereto."

Carrier states that none of the work, "Mechanical Department Boardmarking" for which the higher rate is paid, was transferred from the first shift Crew Clerks to any other shift. Further, that any additional work being performed on third shift Position CB-77 is incidental to the duties of Crew Clerk and of a de minimus nature.

The Carrier argues that this Board is without jurisdiction to adjudicate this dispute because it does not fall under Section 3 of the Railway Labor Act, as amended, because the remedy sought is a "higher rate of pay, or new rate" of pay for Claimant which falls under Section 6 of the Act.

This Board disagrees. The claim seeks to extend an existing rate of pay to a position the Organization asserts is performing the same work as performed on a first shift position receiving the higher rate. The dispute is clearly a Section 3 dispute as the Organization seeks as a remedy a rate of pay for new position CB-77 in conformity with the rate of pay of an analogous position, CB-70, in the seniority district where created. Clearly the remedy sought comes under Rule 50. The procedural issue raised by the Carrier is without merit.

On the merits, this Board is convinced from the record before it that the claim must be denied. We say this for the reason that the record contains no evidence to support the assertion that "Marking the Mechanical Board" for which the higher rate was established, was transferred to the new position, CB-77, held by Claimant. Further, it is an undisputed fact that the higher rate paid on position CB-70 was created to cover the additional responsibility of "Marking the Mechanical Department's personnel board."

### **AWARD**

**Claim denied.**

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**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 19th day of March 1997.**