

Award No. 1368
Docket No. CL-1335

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**

**THE DENVER AND RIO GRANDE WESTERN RAILROAD
COMPANY**

Wilson McCarthy and Henry Swan, Trustees

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that Mr. Cecil Pearson, Stenographer-Clerk, Traffic Department, Salt Lake City, be paid proper rate of pay for position designated as 'Steno-Clerk' (\$6.28 per day) for period December 16, 1938 to December 15, 1939."

There is in evidence an Agreement between the parties bearing effective date of February 1, 1926.

EMPLOYEES' STATEMENT OF FACTS: "On December 24, 1938 the following bulletin was posted by Mr. O. J. Grimes, Assistant Traffic Manager, Traffic Department, Salt Lake City:

'Mr. E. R. Starr former steno-clerk is the successful bidder and has been assigned to position of Rate Clerk in this office as per my bulletin dated December 15, 1938.

Bids will be received in this office up to and including 5:30 P. M., January 2, 1939 in connection with the following vacancy:

Steno-Clerk, Freight Traffic Dept. Rate \$3.67 per day.

Hours 8:30 A. M. to 5:30 P. M., daily except Sundays and holidays; one hour lunch period.'

"This position prior to being vacated by Mr. E. R. Starr, carried a monthly rate of \$160.20. Mr. Cecil Pearson was assigned to this position by bulletin, dated January 3, 1939, reading as follows:

'Mr. Cecil Pearson, former messenger, is the successful bidder and has been assigned to position of steno-clerk in this office as per my bulletin dated December 24, 1938.'

"The employes protested the bulletining of a position carrying a rate of \$160.20 per month at a rate of \$3.67 per day and requested that the bulletin be corrected to show proper rate of \$6.28 per day (which is the equivalent daily rate of a position paying \$160.20 per month). This request was refused by the Carrier.

voiced any dissatisfaction, and has never made any protest or claim, this grievance having been initiated by the Local Chairman."

OPINION OF BOARD: Under the facts and circumstances of this case and the provisions of Rule 10 of the Agreement, this position should have been bulletined and in this instance awarded at the established rate of \$160.20 per month. Solely because of the particular circumstances of this case, the claim for establishment of a daily rate of pay and reparation should be denied.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the carrier and the employe involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the claim will be sustained to extent indicated by the Opinion.

AWARD

Claim sustained to extent indicated by Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 21st day of February, 1941.