

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Royal A. Stone, Referee

**PARTIES TO DISPUTE:**

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

**NORTHERN PACIFIC RAILWAY COMPANY**

**STATEMENT OF CLAIM:** "Claim of Miss Catherine Custer, stenographer-clerk to Asst. Superintendent at Spokane, for rate of \$5.77 per day instead of \$5.34 per day, effective January 10, 1939, based on Rules 75 and 76 of the Clerks' Agreement."

**EMPLOYEES' STATEMENT OF FACTS:** "Prior to January 10, 1939, Miss C. A. Custer was assigned to the position of stenographer to the Assistant Superintendent at Spokane, rate of pay \$5.34 per day. At the same time, the force in the Car Distributor's office consisted of two car distributors, two steno-clerks, rated at \$5.77 per day, and one steno-clerk rated at \$5.24 per day. Effective January 7, 1939, one steno-clerk position rated at \$5.77 per day was abolished and Miss Custer was assigned to work four hours per day in the Car Distributor's office. The work assigned to her was work formerly performed by the two steno-clerks paid \$5.77 per day. Claim was filed on the basis that work could not be taken from a position rated at \$5.77 and given to a position paid \$5.34 per day."

**POSITION OF EMPLOYEES:** "Employees contend that the transfer of duties from a position rated at \$5.77 per day to one paid \$5.34 per day is a violation of Rules 75, 76 and 88 of the agreement between the Northern Pacific Railway and the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees. These rules are quoted below for your ready reference.

'Rule 75. Positions (not employees) shall be rated and the transfer of rates from one position to another shall not be permitted.'

'Rule 76. Employees temporarily or permanently 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 a higher rated employee due to a temporary increase in the volume of the work does not constitute a temporary assignment.'

'Rule 88. Established positions shall not be discontinued and new ones created under a different title covering relatively the same class

mail and reports, applying stickers to daily car service reports, maintaining monthly detached service reports for the west end consuming about eight hours per month and stenographic work during the balance of the day. In other words, it was in January, 1939, primarily a stenographic position. In the settlement of the claim for a rate of \$5.77 per day a compromise was effected under which fifty percent of the difference between the \$5.24 per day rate and the \$5.77 per day rate was paid. Copy of the letter of February 21, 1939, disposing of this case is submitted as Carrier's Exhibit 'C.' This settlement recognized the change in the duties and responsibilities of the position between the previous September and the date it was discontinued in January, 1939. It is not alleged by the Employees that Miss Custer while performing stenographic work in the Car Distributor's office during the afternoons subsequent to January 9, 1939, performed any clerical work which characterized the position paying a rate of \$5.77 per day. This was the basis of the claim that had previously been submitted and disposed of as above set forth. Obviously, there is no basis for Miss Custer's claim as at no time while assisting with the stenographic work in the Car Distributor's office did she perform clerical work in that office, and there is no allegation by the Employees that clerical work in the Car Distributor's office was performed by Miss Custer. What actually happened is that Miss Custer performed only stenographic work in the Car Distributor's office. The performance of such work in that office is paid a rate of \$5.24 per day.

"Miss Custer was occupying a position in the Assistant Superintendent's office paying a rate of \$5.34 per day. Her rate was not reduced because of performing work on a position rated at \$5.24 per day. There is no basis for Miss Custer's claim for payment of the \$5.77 per day rate as she did not assume the duties and responsibilities of a position in the Car Distributor's office paying such a rate. The facts in this case do not sustain Miss Custer's claim and it should be denied."

**OPINION OF BOARD:** There is here a failure of proof of violation of Rule 76. The claimant, so far as the record shows, was not "assigned" to a "higher rated" position. What she did under the change in her own assignment was exclusively stenographic rather than general clerical work. That work was previously done by the occupant of a position rated lower as to compensation than that of claimant herself.

**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 no violation is shown.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: H. A. Johnson  
Secretary

Dated at Chicago, Illinois, this 16th day of April, 1941.