

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**

CHICAGO AND NORTH WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that the Carrier has violated and continues to violate Rules 50, 52 and 64 of Clerks' Current Agreement and wage agreement when it requires Miss Eldora Ekdahl to perform work at rates of pay lower than rates agreed to for designated and advertised work and positions and further claim that she be reimbursed for wage losses suffered as a result of such violations."

EMPLOYEES' STATEMENT OF FACTS: "On September 20th, Miss Ekdahl was assigned to Position No. 90-7, Record Clerk, rate of \$4.60, and on September 21st to 26th inclusive was assigned to Position No. 87-7, Telephone Tracing Clerk, rated at \$4.65 per day. Under Bulletin No. 65, dated September 22nd, copy attached, Record Clerk's Position No. 90-7, rate \$4.60 per day, was abolished effective at the close of business on September 23rd. This position was reestablished as a General Clerk, same rate of pay, and was assigned to Miss Ekdahl on September 23rd. From September 20th to the 23rd inclusive she performed the duties of working Western Weighing and Inspection Bureau grain door statement and on September 25th she worked I. B. M. switch cards, on September 26th she was assigned to work correspondence. These duties were formerly assigned to Position 46-6 rated at \$5.40 per day."

POSITION OF EMPLOYES: "There is in effect an agreement between the parties bearing effective date of January 1, 1936 and the following rules thereof read:

'RULE 50—RATING OF POSITIONS. Positions will be rated. When, as a result of changed conditions, the rate of a position is changed, the position will be bulletined and assigned in accordance with the provisions of Rule 17, except when charges are of a general character.'

'RULE 52—RATES FOR NEW POSITIONS. The rates for new positions will be in conformity with rates of positions of similar duties and responsibility in the seniority district where created.'

'RULE 64—RATES FOR ESTABLISHED POSITIONS. Established positions will not be discontinued and new ones created under a different title covering relatively the same class of work, for the purpose of reducing the rate of pay or evading the application of these rules.'

'64. Established positions will not be discontinued and new ones created under a different title covering relatively the same class of work, for the purpose of reducing the rate of pay or evading the application of these rules.'

"There was no violation of rules 50, 52 or 64 in establishing positions of general clerks 88-7, 90-7 and 95-7 at rate of \$4.60 per day as outlined in Bulletin No. 65. As indicated above, due to changed conditions and installation of machine plan of car record work duties assigned to such positions were changed and they were therefore bulletined as provided in rule 50. Further, the requirements of the new general clerk positions were of similar scope to those of the discontinued positions and in accordance with provisions of rule 52 same rate was applied. In regard to rule 64: In this instance new positions were established under different classification covering relatively the same class of work but this was done so as to have classification more nearly fit the positions and not for the purpose of reducing rate of pay or evading the application of schedule rules. The rate of \$4.60 established for the new positions was the same rate as paid positions discontinued.

"It is the position of the railway company that duties assigned to general clerks positions 88-7, 90-7 and 95-7 are sufficiently similar to those assigned to positions formerly carrying the same numbers and designated as record clerks to warrant establishment of the \$4.60 per day rate and that there is no justification for request that such rate be increased."

OPINION OF BOARD: In this docket there is a transcript of testimony taken on the property. It discloses a conflict which it is not necessary to resolve in order to come to a decision, which must be based on Rule 53.

Thereunder the claimant was temporarily "assigned to a higher rated position" and so should receive the higher rate for that position. While she was on the temporary assignment the claimant fulfilled "the duties and responsibilities of the position" within the definition of the second paragraph of Rule 53. The work done by her in the higher rated position was not "due to a temporary increase in the volume of work." So, under any fair application of Rule 53, the claim is sound. She should be compensated at the rate of the higher position for the days worked from September 20 to October 7, 1939, inclusive.

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 Agreement has been violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 30th day of April, 1941.