

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Paul W. Richards, 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 17, 50 and 53 of Clerks' Current Agreement and wage agreement (1) when it fails and refuses to permit or require employees to perform duties stipulated and described in Bulletin advertising for bids; (2) When it requires employees to perform work at rates of pay lower than rates agreed to for designated and advertised work and positions and further claim that employees in the Division Department, General Office, be reimbursed for wage losses suffered as a result of such violations."

EMPLOYEES' STATEMENT OF FACTS: "Position No. 123-7, rated at \$7.35, was assigned to G. W. Rehfeldt under bulletin No. 17, dated April 24, 1937. On May 17, 1937, R. DeWolf upon being disqualified as a head clerk displaced G. W. Rehfeldt, but has never performed the duties of this position, having instead been assigned to the duties belonging to B. N. Besch, Position No. 68-6, rechecking W. T. L. Cross Line Accounts, and correspondence relative thereto. These duties were arbitrarily taken from B. N. Besch, who had performed same over a period of years at rate of \$6.65, and duties assigned him of rechecking Southeastern Received Accounts.

"Position No. 80-6, rated at \$6.90, was assigned to E. Petz under Bulletin No. 15, dated April 15, 1937, which bulletin stipulated duties as 'rechecking Southeastern Received Accounts and correspondence relative thereto' was assigned arbitrarily to the duties of 'rechecking Southeastern Forwarded and Cross Line Accounts.'

"The duties of E. Krupske who for several years has performed the duties of Position No. 98-7, rechecking Southwestern Received Accounts and correspondence relative thereto at a rate of \$6.05, were arbitrarily taken from him and assigned to F. C. Mason, who is performing same at rate of \$6.90. E. Krupske was then assigned to Job No. 70-7 rechecking Current Cross Line Accounts (all territories) which position was formerly held by F. Catena and rated at \$6.60.

"Position No. 81-6, rated at \$6.90, assigned to W. W. Pittlekau under Bulletin, No. 15, dated April 15, 1937, which bulletin stipulated the duties as 'rechecking Eastern Received Accounts and correspondence relative thereto.' However, the duties of rechecking Eastern Forwarded and Cross Line Accounts, were arbitrarily assigned and which rate at \$7.35.

CARRIER'S STATEMENT OF FACTS: "The auditor freight accounts department is divided into various subdepartments, among which is one designated as the division department. The duties of clerks in this department consist of making division in freight revenue on inter-railroad shipments as between the railroads involved and the rechecking of such work.

"At or about the time of the inception of the above claim the organization in the subdepartment of divisions, auditor freight accounts office, comprised 13 employes classified as percentatge clerks, with rates graduating from a minimum of \$6.45 per day to a maximum of \$7.90 per day, and approximately 31 recheck clerks with rates of pay graduating from a minimum of \$6.45 per day to a maximum of \$8.40 per day, it being the duty of the division clerks, sometimes referred to as percentage clerks, to make a division of revenue between railroads involved in interrailroad shipments, the duties of the recheck clerks being to recheck such computations and perform other recheck work as may be required. In other words, the recheck clerks check or audit the work of division and other clerks.

"For a period in excess of 25 years it has been the practice that when a clerk was assigned to a position in the subdepartment of divisions he performed such division work as may be required, without regard to the particular geographic territory involved in the shipment. The same condition applied to the individual assigned to recheck clerk's position—that is, he was assigned to rechecking computations previously made by other clerks, without regard to the geographic territory involved in such shipments.

"The employes are endeavoring in this dispute to establish a further subdivision of the division department by confining the duties of given positions to a specific geographic territory or to a specific class of work, such as making a separation between forwarded, intermediate, and received accounts, and making a further separation by territory such as the southwestern, southeastern, eastern and western trunk line territory, etc."

POSITION OF CARRIER: "It is the position of the railway company that the assignment of work to employes assigned to duties of making a division of freight revenue and the rechecking of such work as established in the subdepartment of divisions, auditor freight accounts office, was no different at the time of the inception of this claim than has been the practice in that department for a period upwards of 25 years.

"Apparently the employes in the submission of this case are endeavoring to establish a rule which will provide that an individual assigned to division work may be assigned only to a specific class of such work, such as forwarded accounts, intermediate accounts, received accounts, and further, that such assignment be confined to a specific territory, such as southwestern group, western trunk line group, eastern group, etc., and that if after such assignments were made there was not sufficient work in a given group, either by classification or geographic territory to keep the employes therein reasonably employed and there was a surplus of such work in other groups by classification or geographic territory, the railway company would not be privileged to assign work in one geographic territory or class to the other group, and vice versa.

"There are no rules of agreement nor practices involving a period in excess of 25 years establishing the contention of the employes as set forth in the instant case, confining the activities of a division clerk to a specific class of freight or to a specific geographic territory, and such contention not being supported by provisions of rules or practices of many years duration cannot consistently be sustained."

OPINION OF BOARD: In the office of the carrier's Auditor of Freight Accounts there is what is known as the Division Department. The percentage clerks in that department make the division between this carrier and other carriers of revenues involved in inter-railroad shipments. To these

percentage clerks this dispute does not pertain. Another class of clerks in the same department are known as re-check clerks, and with them we have to do in this docket. They audit or re-check the work of the division clerks, and their work presents three phases. A first re-checking is done by eight clerks rated at \$6.45 and one rated at \$7.85 per day. A second re-check is made later by approximately 20 clerks rated at from \$6.90 to \$7.85 per day. A third check is finally made by two clerks but they appear to be not here involved.

The re-check clerk positions are regularly assigned pursuant to bulletining. Rule 17, cited by petitioner contains this: "bulletins to show location, title, hours of service, rate of pay, and brief description of duties." Petitioner points out that bulletins of positions or vacancies shown in the docket contain words such as, "Applicant must be thoroughly familiar with Trans-Continental Divisions and all C. & N. W. divisions on overhead traffic," or "Applicant must have a thorough knowledge of rechecking divisions on interline forwarded, interline received and intermediate interline accounts for Southeastern territory, and must be able to handle correspondence," or "Applicant must be thoroughly familiar with rates and divisions covering Trunk Line and New England territories on interline received traffic as well as handling all correspondence relating thereto," or "Applicant must be thoroughly familiar with rates and divisions covering Western Trunk Line territory and must have a thorough knowledge of interline accounting as he will be required to analyze interline forwarded, received and intermediate accounts as well as handling all correspondence relating thereto." Petitioner urges that employees bidding may rightfully consider statements in bulletins such as those that have been quoted as being "brief description of duties" within the meaning of Rule 17. This is denied by carrier, and is a matter to which considerable discussion is found in the docket.

Employees depend largely on the adoption of the foregoing manner of identifying the duties of various positions to sustain in argument their claim that carrier violated Rules 17, 50 and 53 in the manner set out in (1) and (2) of the claim. But it appears to the Board that the showing in this docket is insufficient to enable the Board to decide whether or not, as stated in (1) and (2) of claim, carrier has failed and refused to permit or require employees to perform the duties stipulated, even though the indentments from the bulletins for which employees contend should be adopted, or to decide whether or not employees have been required to perform work at rates of pay lower than rates agreed to for designated and advertised work and positions, and for which reimbursement of pay lost is claimed. True, petitioner states, "We contend Messrs. E. Petz, E. Krupske, and W. Pittlekau are performing higher rated duties at reduced rates of pay in violation of the agreement. From the employees' statement however, it appears that each of these employees is being paid at a higher rate than that of the position he bid in, and in order to establish the allegation that these employees are performing higher rated duties at reduced rates of pay in violation of the agreement, petitioner points out that there is a position doing the same class of work in the same group, as the groups are classified by petitioner, that has a higher rating. The difference of rates in the same group however was something negotiated and agreed to by the parties, and of the fact that the difference exists complaint can not very well be made. And a showing that another employee is paid at a higher rate, without more, would not be sufficient to establish that these three employees are performing higher rated duties at reduced rates of pay in violation of the agreement. Before the conclusion that the three employees were so doing would be dependable, the matter of the seniority rights of the higher paid employee in the group would have to be given consideration, which employees have not done. There is also in the docket the showing that the employees make no contention that if there is not sufficient work in one territory to keep the employees reasonably busy the carrier may not assign them to work on other territories, or that the carrier may not assign employees to assist other employees. Were it otherwise it would seem that the employees as well as

the carrier would lose the advantages following an extending of experience on part of the employes over the field of the department's operations. Petitioner admits Rule 53 gives the carrier the right to temporarily or permanently assign to a higher rated position, and adds that all the employes ask is that the employe be properly compensated. The line of demarcation has not been drawn in the docket between the carrier's and the employes' participation in and instigation of the variations from work on the original assignment that are shown, nor as stated does it satisfactorily appear that in any of these instances the employe has not received the pay of the higher rated position.

In the opinion of the Board the present showing is insufficient to enable the Board to make decision on the claim as made and that the claim should be dismissed without prejudice to the rights of either party.

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 employes involved in this dispute are respectively carrier and employes 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 showing is insufficient to make decision of the claim as made, and the same should be dismissed without prejudice to the rights of either party.

AWARD

Claim dismissed without prejudice to the rights of either party.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 31st day of July, 1941.