

Award No. 1773
Docket No. CL-1800

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Herbert B. Rudolph, Referee

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 System Committee of the Brotherhood that position bulletined in Chief Engineer's Office under date of June 20, 1941, with designation "File and Record Clerk," rate \$5.50 per day, be rebulletined at proper rate of \$7.45 per day, claim being based on violation of Rules 49 and 60 of Agreement dated June 1, 1941, such rate to be effective as of date of assignment on original bulletin.

JOINT STATEMENT OF FACTS: On June 20, 1941, following bulletin was posted in Office of Chief Engineer:

"BULLETIN

Denver, June 20, 1941

Due to reorganization of forces in the Engineering Department, bids will be received in my office for a period of five days from date for the following position:

Position —File and Record Clerk
Location —Denver, Colorado
Hours —8:00 A.M. to 5:00 P.M.

Assigned rest day—Sunday

Rate of Pay —\$5.50 per day

Qualifications—

Stenographic experience.

Good working knowledge of the Rio Grande system with respect to Division boundaries, stations, etc.

Duties—

Maintain files, records of AFE's, deeds, ordinances, bridges, buildings, etc. Prepare pay roll and other miscellaneous reports as necessary.

A. E. Perlman
Chief Engineer."

and Rule 60, reading:

"RULE 60. Established positions shall not be discontinued and new ones created under a different title covering relatively the same class of work for the purpose of reducing the rates of pay or evading the application of these rules."

were not violated, inasmuch as an entirely new position was created, and the rate established fully complied with the provisions of Rule 52, reading:

"RULE 52. Wages for new positions shall be in conformity with the wages for positions of similar kind or class in the seniority district where created. If no similar position exists in the seniority district where created, rate shall be in conformity with positions of similar nature in adjoining seniority districts and shall be subject to negotiations."

As a matter of fact, rates for file clerks on this property are—

\$4.45	per day
4.75	" "
5.25	" "
6.21	" "

We only have one position paying \$6.21 per day, that being a position in the Passenger Traffic Department with title of "Stock and Record Clerk" and in addition to filing, occupant is also responsible for passenger department ticket stock, tariffs, etc. Therefore, the rate of \$5.50 per day is actually in excess of that paid on similar positions.

The Organization requests:

"* * * that the position now designated as 'File and Record Clerk,' which was formerly classified as 'Head File Clerk' be rebulletined at the proper rate of \$7.45 per day, effective from date position was filled by bulletin of June 20, 1941."

In this connection, the Carrier wishes to bring out that the rate of \$7.45 per day is in error, inasmuch as a proper conversion of the \$190.00 monthly rate to a daily basis produces a rate of \$6.25 per day, and not \$7.45 per day.

OPINION OF BOARD: On July 1, 1941 the carrier established the position of File and Record Clerk in the Chief Engineer's Office at Denver. This position was bulletined and assignment made.

Employees contend that the carrier has violated Rule 60, which provides: "Established positions shall not be discontinued and new ones created under a different title covering relatively the same class of work for the purpose of reducing rates of pay or evading the application of these rules."

Employees' contention is based upon the fact that at the time this position was established there was abolished the position of Head File Clerk in the same office, and it is contended that the new position is performing "relatively the same class of work" as that performed by the abolished and higher rated position. The carrier contends that the newly established position is in fact a new position and carries a wage "in conformity with the wages for positions of similar kind or class" within the meaning of Rule 52 of the agreement.

The issue thus presented is one of fact which must be determined upon the proof submitted. The employees have submitted Exhibit "A," which sustains their position. Carrier's response to Exhibit "A" is as follows: "Employees' Exhibit 'A' does not correctly reflect the duties which were performed by Mr. Eddy (former occupant of abolished position). In addition to the duties of Mr. Eddy as outlined in Exhibit 'A,' he also performed the following duties:

“Preparation of Vouchers
Recording Improvement Work
Recording Deeds
Recording Completion Reports
Maintenance of Bridge Records, and
Miscellaneous Clerical and Secretarial work.”

However, at least a part of this work which carrier contends was performed by Mr. Eddy and not included in Exhibit “A” is included in the duties as described in the bulletin advertising the position of “File and Record Clerk.”

It is not necessary to constitute a violation of Rule 60, that the duties of a newly created position be identical with those of a discontinued position, all that is required is that the newly created position covers “relatively the same class of work.” Upon the entire record it must be found that the carrier has violated Rule 60.

We find no merit in carrier’s contention that the old monthly rate converted into a daily rate would produce only \$6.25 per day.

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 employees involved in this dispute are respectively carrier and employees 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 carrier violated Rule 60 of the agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 17th day of April, 1942.