

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

John W. Yeager, Referee

PARTIES TO DISPUTE:

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

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY

(J. M. Kurn and John G. Lonsdale, Trustees)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, that:

(1) The Carrier violated and is continuing to violate the Clerks Agreement rules when it failed and has refused to properly classify and rate positions of certain key punch operators in the Machine Bureau of the General Auditor's office after assigning and requiring employes to perform certain work on machines that was formerly handled by Timekeepers and Assistant Timekeepers at various points on the railway, this work commonly termed "posting" of time earned and the figuring of the extensions connected therewith,

(2) and that Miss Hilda Melchior, Miss Elizabeth Doyle, Miss Pauline Bracke, Miss Laura Spindler, Miss Marcella Byrne, Miss Jane Ellison, and any other key punch operators who have worked as verifiers or who have punched time slips and payrolls shall now be rated at \$5.65 per day and be compensated on that basis from and after October 12, 1940.

EMPLOYES' STATEMENT OF FACTS: Prior to September 1932 the timekeeping for the train and engine men, station employes and track forces was all handled by various Timekeepers and Assistant Timekeepers located at certain points on the railway. In September 1932 timekeeping for the train and engine men, station and track forces was moved to St. Louis and centralized in a consolidated Timekeeping Bureau. Prior to this centralization of work there was in existence a total of fifteen Timekeepers and Assistant Timekeepers on the line of road and a total of eight new positions were created in St. Louis to take care of all of this work when consolidated and centralized.

In January 1937 the Mechanical Department timekeeping was moved to the St. Louis Timekeeping Bureau with a similar loss of positions that had been in existence on the line of road. Some time later the timekeeping from the Frisco Lines in Texas and the payroll of the General Offices was also brought into this Bureau.

When the work in question was handled by the Timekeepers and Assistant Timekeepers on the line it was necessary for them to do this by hand in books made for the purpose of keeping time and was known as "posting" and this is the work that was done away with completely and none of those

OPINION OF BOARD: A determination of this case depends upon a factual background and an interpretation of certain rules, therefore, it seems proper to a complete understanding of the matter that the pertinent facts found from the records should be set out.

Prior to September, 1932, the timekeeping for the train and enginemen, station employes and track forces was handled by Timekeepers and Assistant Timekeepers located at certain points on the railway. These Timekeepers were a part of the Division Office service and personnel. During September of 1932, this function was moved to St. Louis and was lodged with the Auditor of Disbursements. With the transfer fifteen Division Office timekeeping positions were abolished. Nine Auditor of Disbursement timekeeping positions were created. About this there is no complaint.

In January, 1937, the Mechanical Department timekeeping was likewise transferred to St. Louis. Five timekeeping positions were abolished and in St. Louis two timekeeping and two distribution clerks' positions created. About this also there is no complaint.

Substantially then the claim is that six employes in the Machine Bureau of the General Auditor's office are performing and giving their time in whole or in large part to the work which was, before 1932 as to the one group of employes, and before 1937 as to the other named group, performed by Division Office timekeepers, and that they are entitled to be classified and rated as timekeepers, and receive the minimum rate of pay for such classification, whereas they are not now so classified, but are classified as Key Punch Operators and receive the corresponding rate of pay.

The Employes contend that the Carrier has violated Rule 83, which is as follows:

"Established positions shall not be discontinued and new ones created under same or different titles covering relatively the same class of work serving the purpose of reducing the rate of pay or evading the application of these rules."

The Carrier says that there has in fact been no violation, and further in substance that in any event laches and prior evident interpretation by claimant which the Carrier had a right to, and did rely on, should in any event, preclude a recovery.

If a determination in the particular instance may be had on the merits which is just and proper and which does not come into conflict with sound precedent, then reference should not be had to the uncertain and divergent rules of law bearing on "laches" or "interpretative acquiescence."

In the light of this approach we find from the record here (1) that the transfers were made properly, (2) that certain work formerly done by timekeepers was transferred to the Key Punch Department, (3) that all of the transferred work became strictly key punch work except certain "verification work," (4) that the Key Punch Department had existed previously and that this work was added to the work of the Department without the creation of a new classification to handle the work, (5) that this work appears however to have been assigned to six particular employes in the Department, (6) that these employes are on a lower pay rating than timekeepers, (7) that with the making of the two transfers a total of twenty timekeeping positions were abolished and eleven new ones established, also two distribution clerks' positions were established.

These facts are significant in a determination of whether or not new positions have been created covering **relatively** the same class of work. "Relatively the same," may be variously defined, and it is not capable of exact definition, but in common acceptance and as generally understood, it means, in **substance, or in its primary particulars the same**. This Third Division in Award 1092, Docket CL-1152, has made practical application of this definition and principle. There it is stated:

"This is contrary to the principle established by this Board, with respect to the proper application of Rule 43 of the current agreement between the parties in Award No. 236, wherein it was held that where a majority of the work remains, positions may not be abolished and lower rates created for that work. The carrier violated Rule 43 when it required these machine operators, rated at \$120.20 per month, to devote principally all of their time to work which comprised two-thirds of the duties of positions formerly paying \$140.20, \$145.20, and \$150.20 per month."

If this statement is a reasonable application of one side of the rule then a reasonable application of the converse of the rule should be considered proper. This calls for an appraisal of the amount, and if possible, the character of the work which was transferred to the Machine Department and of that which remained in the hands of timekeepers and others.

The entire work was handled prior to transfer by twenty timekeepers. The work which remained after transfer of a portion of the Machine Department is handled by eleven timekeepers and two distribution clerks. The transferred work is handled by six key punch operators who devote part or all of their time to the work. On the basis of mere number of employees engaged on the Division of timekeeping employment it is obvious that less than one-third of timekeeping work was transferred to the Key Punch Operators.

Now as to the character of the transferred work, it is clear that practically all of the clerical work with reference to the timekeeping is done before the Key Punch Operators begin to function, and that practically none is done by them, also that in quantity and quality and relative importance the division of work transferred to Key Punch Operators is minor by comparison with that which remains to timekeepers, and distribution clerks, which is major.

As a general observation this case should not be allowed to depend upon what amount of the transferred work was assigned in the Key Punch Department to any particular operator or operators, but upon the relative amount and character of work taken from the Timekeeping Department and transferred to and performed in the Key Punch Department.

From the entire record we find no violation by the Carrier of Clerks' Agreement as contained in the rules, and particularly Rule 83.

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 claim in its entirety is denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 1st day of May, 1942.