

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

St. Clair Smith, Referee

PARTIES TO DISPUTE:

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

KANSAS CITY TERMINAL RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that position of Clerk, Car Department, be reclassified as A. R. A. Clerk and that a rate of pay of \$7.46 per day be established effective as of December 31, 1942.

EMPLOYEES' STATEMENT OF FACTS: For the period January 1, 1920, to date the employees in Car Department have been represented and covered by Agreements governing their hours of service and working conditions as follows:

January 1, 1920, to April 2, 1924, by National Agreement between Brotherhood of Railway Clerks and Director General of Railroads, United States Railroad Administration.

April 2, 1924, to February 17, 1936, by Agreement between Kansas City Terminal Clerks Association and Kansas City Terminal Railway Company.

February 17, 1936, to date, by Agreement between Brotherhood of Railway Clerks and Kansas City Terminal Railway Company.

On October 21, 1939, the employees served notice on the carrier for the revision of certain Rules of the Agreement of February 17, 1936. Negotiations in regard the requested revisions were carried on thereafter and concluded September 17, 1942, when a Mediation Agreement was signed by the parties providing "* * * it is mutually agreed that the questions at issue shall be and are hereby disposed of by the signing of a memorandum agreement, effective October 1, 1942, covering certain changes in rules governing working conditions of the employees represented by the above-named organization, copy of said memorandum agreement being attached hereto, but not made a part hereof * * *." The memorandum Agreement attached incorporated the changes in the Agreement of February 17, 1936, to be effective October 1, 1942.

The following Rules appear in the revised Agreement of October 1, 1942:

"RULE 44 RATING OF POSITIONS Positions (not employees) shall be rated and the transfer of rates from one position to another shall not be permitted."

"RULE 45 NEW POSITIONS—CHANGES IN RATES The wages for new positions shall be in conformity with the wages for positions of similar kind or class in the seniority department where created.

the Commissioner of Internal Revenue, unless the increase is made in accordance with the terms of a salary agreement or salary rate schedule. Even then, an increase cannot be granted unless it is a result of one of the following:

- (1) Individual promotions or reclassifications.
- (2) Individual merit increases within established rate ranges.
- (3) Operation of an established plan of wage or salary increase.
- (4) Increased productivity under piece-work or incentive plans.
- (5) Operation of an apprentice or trainee system.

There having been no changes in the class of work performed on this position since the promulgation of the regulations of the Director of Economic Stabilization, it would be, in our opinion, a violation of the Act to reclassify the position by merely changing the title thereof and intending such action to form the basis for increasing the rate of pay on the grounds that the position was "reclassified," and, therefore, came within Item (1) of the above listed categories.

If it were only necessary under the law to nominally "reclassify" a position in order to grant an individual increase, then it would seem that the spirit and intent of that part of the Act relating to wage increases could easily be circumvented by an employer simply changing the title of a position and designating the change as an "individual reclassification."

OPINION OF BOARD: In substance the claim is that a position classified as "Clerk," rate \$6.05 per day, should be reclassified as of December 31, 1942, as "A. R. A. Clerk," rate \$7.46 per day.

The controlling facts are largely undisputed. Prior to April 13, 1931, the Carrier maintained a position classified as A. R. A. Clerk, the rate of which, as it would have been increased by subsequent general wage increases, would approximate the claimed rate. That position, however, was abolished on April 13, 1931, and its remaining duties, which had become limited in extent, were taken over by an Assistant Supervisor.

On February 17, 1936, a working agreement between the Organization and the Carrier became effective. Its Scope Rule described the workers of this office as of a single class, viz., "Clerical Workers." One of the Clerical Workers described in this agreement handled a combination of A. R. A. and wheel-pit work, and some portion of the A. R. A. work was handled by the Assistant Supervisor.

Claimant was assigned to the position in October, 1940, and handled wheel-pit work and all A. R. A. work. In October, 1942, the current working agreement became effective. It also described the workers of this office as of a single class, viz., "Clerical Workers." The title A. R. A. Clerk has not been attached to any position in the office. Nor has a position of the claimed higher rated class existed therein since prior to the effective date of the 1936 agreement.

The employees represent, and the Carrier does not seriously dispute, that, due to an increase in business, the A. R. A. work has constituted 55% of his work since before December 31, 1942. For that reason the Organization asserts that the position should be reclassified and re-rated.

The fatal infirmity in claimant's situation arises from the fact that no higher rated position, to which his duties are related, has existed since long before the described working agreements became effective. The claim is clearly ruled by Award 1843 and there is no occasion for adding to what was there written. We quote:

"As a premise for further discussion, and decision on the claim it will be stated as a controlling principle that in the Clerks' Agreement consummated on September 1, 1936 the parties contracted with reference to positions as they existed on that date and such as were to be

created or adjusted thereafter and not with reference to situations or positions which had ceased to exist before completion of the agreement, * * *. Also resort may not be had to pre-existing conditions or practices to modify change or explain the operation or effect of the September 1, 1936 Clerks' Agreement where the terms and implications of the agreement in pertinent respects were complete, plain and unambiguous. This is but a statement of fundamental principle in contractual interpretation and application.

"* * * *

"* * * *

"There is no rule in the Clerks' Agreement here providing a method for rerating an existing position to which new duties are added, which duties have not been identified as belonging to a higher, or even a lower rated position. Therefore, if such be the true fact in this case, the matter is one, in the first instance, for negotiation between the parties."

See Awards 1074, 2027 and 2215.

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 Carrier did not violate the working agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 25th day of February, 1944.