Award No. 3224

Docket No. CL-3255

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

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

LEHIGH VALLEY RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that the Carrier violated the Clerks' Agreement:

1. When it created the position of Clerk-Stenographer, Sayre, Pennsylvania, at monthly rate of $155.10 instead of $180.10.

2. That position of Clerk Stenographer in Crew Dispatcher's Office, Sayre, Pennsylvania, be rated at $180.10 per month effective June 4, 1943.

EMPLOYES' STATEMENT OF FACTS: "Prior to April 2, 1942, an Assistant Trainmaster's organization was maintained at Sayre, Pa. Effective April 2, 1942, as a result of changes in Division operations, the Assistant Trainmaster's office was transferred to Manchester, N. Y. For many years prior to the transfer, a Lead Clerk position was established in the Assistant Trainmaster's office at Sayre, at rate of $225.00 per month, the chief duties of which, were the taking and transcribing of statements and investigations conducted by the Operating Department. This position was transferred to Manchester, N.Y. (in another seniority district). The incumbent of the Lead Clerk position, Mr. A. E. Daugherty, did not elect to transfer with the position, but exercised his seniority on a position at Sayre. Subsequently Mr. Daugherty bid for and was assigned to position of Clerk-Steno at Sayre Freight Office.

The handling of formal investigations with Train Crews was conducted at Sayre after the Assistant Trainmaster's office was transferred, and, as the Assistant Trainmaster's Stenographer, was located at Manchester, Mr. Daugherty was called and required to leave his position in the Freight Office and go down to the Passenger Station to take and transcribe investigations and statements. When Mr. Daugherty was not available, Mr. Seible, Clerk in the Track Supervisor's office was called and required to take and transcribe investigations and statements.

The Local Committee protested this action of the Carrier and made claim for higher rate of pay for Messrs. Daugherty and Seible, account of required to perform duties of a higher rated position.

On July 12, 1942, the District Committee addressed the following letter to the Superintendent:

of a previously abolished position of Lead Clerk in the office of the Trainmaster at Sayre rated at $225.00 per month, which former position and rate the employes contended should be used in determining the rate on this position. Apparently, the employes agreed with Carrier in this position, as claim, since discussion on the property, has been changed to claim for rate of $180.10 (now $198.46) per month, based on Employes' statement that due to no similar positions in the same territory, the rate of new position would be made comparable with position in other districts, namely at Coxton, Pa., and Oak Island, N. J.

In establishing the rate on the position in question, there was a comparable position at the same location and in the same seniority district, in the office of the Supervisor of Track. The duties of this position included general routine clerical and stenographic work, and on account of the similarity in the duties of this position and the one being newly established in the office of the Assistant Road Foreman of Engines, the rate was made to conform with the rate paid on that position, namely, $155.10 (now $173.46) per month.

The contention of the Employes that there was no position of similar class in the same seniority district is without merit and not a fact. Furthermore, their contention that rate of this position should be established to conform to rate paid positions in other seniority districts at Coxton and Oak Island would not be consistent with the provisions of Rule 5 of their agreement. We did establish positions as clerk-stenographer in the joint offices of the Master Mechanic and Road Foreman of Engines at Wilkes-Barre (not Coxton) and Oak Island, at rate of $180.10 (now $198.46) per month, but these positions are not comparable to the position in question, and the rates on them were established to conform to rates paid on similar positions in the seniority districts where they existed. which was strictly in accordance with the requirements of Rule 5.

In the light of the foregoing facts and circumstances set forth in this submission, it is the contention of the Carrier that the claim of the Employes should be denied.

OPINION OF THE BOARD: On April 2, 1942, the Assistant Trainmaster's Office was transferred from Sayre, Pennsylvania to Manchester, New York. The Lead Clerk position in that office, rate $223.76 per month, was also transferred to Manchester with all the duties attached thereto except the stenographic work performed in taking notes on investigations. Although located in Manchester, the position remained in the Seneca Division Seniority District. On October 3, 1943, the Assistant Trainmaster's Office was moved from Manchester to Buffalo, New York. The Lead Clerk position was also moved to Buffalo where it now exists.

When the Lead Clerk position was removed from Sayre, it was occupied by A. E. Dougherty who declined to follow the position and elected to take a Clerk's position in the freight house at Sayre. He was required during the period prior to June 4, 1943, to take notes on investigations, it being work formerly performed by him when he occupied the position of Lead Clerk. When he was not available, a Clerk in the Track Supervisor's Office performed it. The local committee protested this action and the two Clerks made claim for the pay of the higher rated position whose work they claimed they were performing.

On June 4, 1943, a position of Clerk-Stenographer, rate $155.10 per month, was established at Sayre, it being the position the rate of which is here protested. It is the position of the Organization that it should be rated at $180.10 per month. This claim is based on their contention that the duties were the same as those formerly belonging to the Lead Clerk's position before its removal from Sayre and that comparable positions existed at Coxton and Oak Island in other seniority districts, rated at $180.10. No similar jobs are alleged to have existed in the same seniority district.

It is necessary to point out that Rule 5 of the current Agreement provides:

> "The wages for new positions shall be in conformity with the wages of positions of similar kinds or class in the seniority district where created."

We have held under this rule, correctly we think, that where no positions of similar kind or class exist within the seniority district, no agreed upon standard exists by which this Board could fix a rate without entering the field of contract making. We think, therefore, that the rates of similar positions at Coxton, Oak Island or other points outside the seniority district, can have no bearing upon the present controversy. Awards 1586 and 1684.

The Lead Clerk position, although at Buffalo, is still in existence and within the same seniority district as the position in question. We think the position here involved must be treated as a new position and not the assignment of an employe to a higher rated position within the meaning of Rule 4 (a) of the Agreement.

The Organization contends that Rule 9 of the Agreement is controlling. The applicable part of that rule is:

> "* * * but established positions will not be discontinued and new ones created under the same or different titles covering relatively the same class or grade of work, which will have the effect of reducing the rate of pay or evading the application of these rules."

The evidence establishes that the duties performed on the new position at Sayre were formerly performed by the Lead Clerk before that position was moved to Manchester. The occupant of the new position held the position of Lead Clerk while it was located at Manchester. He states that he is now performing the same work that he performed at Manchester. The evidence seems to sustain this view although it is not shown that the Lead Clerk's position might not have had other responsible duties. The Carrier contends the new position was similar to positions in the Stores Department and Track Supervisor's Offices at Sayre. We are convinced that if the new position was rated as similar in kind and class as the Clerks' positions in the Track Supervisor's Office and the Stores Department by virtue of Rule 5 that the action was not justified, as the record shows these positions to be minor in character and rated accordingly.

The Organization states: "As no position of similar nature involving the same class or grade of work existed in the Sayre District the Committee rightfully contended that the character of the work and duties involved warranted establishing a rate of pay commensurate with the work performed * * *." While this statement is true from the standpoint of an equitable consideration of the matter, the fact remains that this Board is powerless to fix rates of pay unless the standard for so doing can be found in the Agreement. This Board can require the payment of rates required under some rule of the Agreement but in the absence of such a rule, the Board lacks the authority to act, for such action would be the equivalent of negotiating an agreement. We can find no rule in the current Agreement containing any standard applicable to the present situation. A denial award is therefore required.

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 Board has no jurisdiction to fix the rate of the new position, and that there is no ground for setting aside the rate fixed by the carrier and remanding the case for further negotiation.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 29th day of May, 1946.