

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Robert G. Simmons, Referee

PARTIES TO DISPUTE:

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

MINNESOTA TRANSFER RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(A) The Carrier (Minnesota Transfer Railway Company) violated the intent and provisions of the Clerks' Agreement when it refused and continues to refuse to compensate Miss Veronica Shortt, at the agreed upon rate of \$7.21 per day for booking car records, and

(B) That Miss Veronica Shortt, be compensated at the amount of the difference between \$5.72 per day (the amount she received for performing the duties of booking car records) and \$7.21 or \$1.49 for each Monday from August 21, 1944 until and including July 3, 1945.

EMPLOYEES' STATEMENT OF FACTS: On August 16, 1944, Agent Wright, issued Bulletin No. 135, requesting applications on Relief Position No. 60, just created.

Wage—Rate of Position Worked.

Hours—Hours of Position Worked.

Day Off—Saturday.

Principal Duties—As designated by each position title.

Position No. 60 Monday—Work empty cars forwarded known as "bums"
Rate \$5.72 per day. Hours 12:00 AM to 8:00 AM

Position No. 66 Tuesday—Ditto Machine Operator Rate \$5.46 per day.
Hours 12:00 AM to 8:00 AM.

Position No. 69A Wednesday—Messenger and Machine Operator
Rate \$4.56 per day. Hours 7:00 AM to 4:00 PM

Position No. 69B Thursday—Messenger and Machine Operator
Rate \$4.56 per day. Hours 9:00 AM to 6:00 PM.

Position 67 Friday—Ditto Machine Operator and Messenger. Rate \$5.19 per day. Hours 4:00 PM to 12:00 AM

Position No. 65 Sunday—Film Developer and Machine Operator. Rate \$5.99 per day. Hours 12:00 AM to 8:00 AM

she could take over the other work, that she should so advise him. She never did advise Mr. Babcock that she was qualified to take over the work in accordance with the bulletin.

POSITION OF CARRIER: Rule 15 reads:

Time In Which To Qualify.

"(a) Employees entitled to bulletined positions will be allowed thirty (30) calendar days in which to qualify, and failing, shall retain all their seniority rights, may bid on any bulletined position, but may not displace any regularly assigned employee.

(b) When it is definitely determined by the Management (through a hearing if desired) that the employee cannot qualify, employee may be removed before the expiration of thirty (30) calendar days. An employee who fails to qualify on a temporary vacancy may immediately return to employee's regular position.

(c) Employees will be given full co-operation in their efforts to qualify."

It is the duty of the management to render every assistance to permit applicants to qualify for positions, and it was the aim of the Chief Clerk to comply with this rule, and that was his reason for suggesting that she book car records until such time as she felt she was qualified to take on other work. At no time did she so advise him and on May 16, 1945, the General Chairman of the Clerks' Organization advised the agent that she was being improperly compensated on her assignment. Upon receipt of this notice, the agent investigated as to her ability to take on the work and it was conclusive that she was not competent so the position was discontinued. The matter was referred to me on an appeal, and I advised Mr. Fred Longbotham, General Chairman of the Organization, under date of November 9, 1945, as follows:

"Referring to your letter of November first, wherein you advise that you first called the management's attention to the fact that Miss Shortt was being improperly compensated on her assignment on May 16, 1945, and Miss Shortt was used one day, i. e., May 21st.

Under the circumstances, she would only be entitled to the difference in rate of pay in accordance with your recommendation, which is \$1.49. I am not in accord with your position in the matter but in order to avoid taking this case to the Board under the small amount of money involved, I am willing to pay this difference of \$1.49."

The basis for this letter is on a number of awards rendered by your Board, wherein it is held that the retroactive period is the time at which the matter was called to the attention of the management.

OPINION OF BOARD: The facts in this claim are not in serious dispute. The employee bid on and was assigned to a bulletined job paying a rate of \$5.72 per day. When she reported she was put to work on a position with a rate of \$7.21 per day and worked that job on Mondays from August 21, 1944, to May 21, 1945. There seems to be no question but that she was not qualified to do the \$5.72 per day job; likewise, no objections are raised or charged of lack of qualification to do the \$7.21 job.

The Carrier says it put her on the \$7.21 job to train her for the \$5.72 job; that is not denied. The Carrier says she was to report back when qualified. She never reported back and whether she ever became qualified to do the \$5.72 job is not shown. The Carrier seems to have forgotten her, until a claim for difference in pay was made. Then the job was abolished.

It seems to us that all this argument about the \$5.72 job is beside the point. The employee did the \$7.21 job. The Carrier should pay her for the work done.

The Carrier argues that it should not be required to make retroactive payment. In its behalf there are cited Awards 491, 788, 1289, 1609, 1806, 2281, 2550, 2700, 2784, 2811, and 3038. These awards turn on an application of principles of laches or estoppel. We find no elements here that would justify the application of either of those principles.

When all is said and done, the employe performed the work of the \$7.21 position, and should be paid for it.

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 claim is sustained for each Monday from August 21, 1944, to May 21, 1945, inclusive.

AWARD

Claim sustained as stated in Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary

Dated at Chicago, Illinois, this 22nd day of October, 1946.