

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

Edward F. Carter, Referee

**PARTIES TO DISPUTE:**

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

**GULF COAST LINES; INTERNATIONAL-GREAT NORTHERN  
RAILROAD CO.; THE ST. LOUIS, BROWNSVILLE & MEXICO  
RAILWAY CO.; THE BEAUMONT, SOUR LAKE & WESTERN  
RAILWAY CO.; SAN ANTONIO, UVALDE & GULF RAIL-  
ROAD CO.; THE ORANGE & NORTHWESTERN RAILROAD  
CO.; IBERIA, ST. MARY & EASTERN RAILROAD CO.; SAN  
BENITO & RIO GRANDE VALLEY RAILWAY CO.; NEW  
ORLEANS, TEXAS & MEXICO RAILWAY CO.; NEW IBERIA  
RAILWAY CO.; HOUSTON & BRAZOS VALLEY RAILWAY  
CO.; HOUSTON NORTH SHORE RAILWAY CO.; ASHERTON  
& GULF RAILWAY CO.; RIO GRANDE CITY RAILWAY CO.;  
ASPHALT BELT RAILWAY CO.; SUGARLAND  
RAILWAY CO.**

**(Guy A. Thompson, Trustee)**

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

(a) The Carrier violated the Clerks' Agreement at Bloomington, Texas, beginning December 22, 1945, when it nominally abolished position of General Clerk, rate \$8.25 per day, and concurrently therewith established a position designated as Yard Clerk with rate of \$6.22 per day. Also,

(b) Claim that Carrier be required to re-establish the position of General Clerk and that the employe who has worked the position as Yard Clerk be paid for all losses sustained as a result of the violation.

**EMPLOYEES' STATE OF FACTS:** On December 19, 1945, the Carrier issued bulletin advising that position of General Clerk at Bloomington would be abolished with the termination of assignment on December 21, 1945. The bulletin stated that the remaining duties would be assigned to the Agent.

On that same day, December 19, 1945, the Carrier also issued a bulletin advertising a position of Yard Clerk to work the same hours as did the General Clerk, but with a 365 day annual assignment.

shown, the position of General Clerk was discontinued and the position of Yard Clerk restored. In other words, with the ending of the war following which the heavy movement of oil and gasoline from Bloomington ceased and the operations at that station returned to their normal pre-war status the Carrier merely readjusted the force accordingly; that is, took off the position of General Clerk established during the emergency in lieu of the Yard Clerk and restored the position of Yard Clerk, which position was normally employed at that point.

There is no rule in the Clerks' Agreement which prohibits the right of the Carrier to discontinue a higher rated position when the need of the services of that particular position are no longer necessary and establish in lieu thereof a lower rated position who may under its classification perform all work necessary to be performed, provided the provisions of Rule 52(a) are not violated. In the case under consideration the Carrier found it possible after the ending of the emergency to get along without the services of the higher rated position of General Clerk and restore the former lower rated position of Yard Clerk. Certainly the Carrier should not be required to employ a greater force than is necessary to efficiently and economically handle its business, nor should it be required to employ higher rated personnel than is necessary to efficiently and economically handle its business. According to the statement of Yard Clerk Whittle, the occupant of the position of Yard Clerk, and who formerly occupied the position of General Clerk before it was discontinued in December, 1945, the provisions of Rule 52(a) were not complied with by the Carrier during the period December 22, 1945 to January 10, 1946; but that since January 10, 1946 there has been no violation of that rule by the Carrier. For its violation of Rule 52(a) during the period December 22, 1945 to January 10, 1946, the Carrier is, as previously stated, agreeable to allowing Yard Clerk Whittle the difference between the rate of the General Clerk and the rate of the Yard Clerk. According to his own statement since January 10, 1946, he has not been required by the Carrier to perform other than Yard Clerks' work and, therefore, there is no basis subsequent to January 10, 1946, for the Employees' "claim that Carrier be required to re-establish the position of General Clerk and that the employee who has worked the position of Yard Clerk be paid for all losses sustained as a result of the violation."

With the payment of Yard Clerk Whittle of the difference between rate of General Clerk and rate of Yard Clerk for the period of violation of the Agreement (December 22, 1945 to January 10, 1946) he will have been "paid for all losses sustained as a result of the violation."

The Employees' claim that the Carrier be required to re-establish the higher rated position of General Clerk when the services of such a position are not required by the Carrier is not justified by the record, nor is it supported by the rules of the Clerks' Agreement. Furthermore, such a requirement would, obviously, be inconsistent with the Carrier's obligation to render not only efficient but economical service to the public.

Based on the above record in this case it is the position of the Carrier that the contention and accompanying claim of the Employees subsequent to January 10, 1946, is without justification or merit and should accordingly be denied.

**OPINION OF BOARD:** Prior to June 20, 1942, the force employed at Bloomington, Texas, consisted of an agent and one yard clerk. Because of an increase in business due to heavy movements of oil and gasoline from the loading racks at Portilla, located three miles south of Bloomington, it was deemed advisable to have a general clerk instead of a yard clerk in order that the former could assist in the billing resulting from this additional business. Carrier thereupon discontinued the position of Yard Clerk and bulletined the new position of General Clerk. In December, 1945, business receded to such an extent that the Agent could handle all of the billing and the other duties of his position. The Carrier thereupon abolished the position of General Clerk as of December 21, 1945, and re-established the position of

Yard Clerk. It is the contention of the Organization that Yard Clerk is doing substantially the same work as was formerly performed by the General Clerk at the reduced rate of pay of the Yard Clerk's position.

The Carrier admits the violation to and including January 10, 1946, but alleges that subsequent to that date no duties were performed by the Yard Clerk other than the duties properly belonging to that position except "any other work that has been done by Clerk Whittle has been at his own accord and not by instructions from Agent." From an examination of the whole record, we are convinced that there was a violation, as charged, of Rule 52(a), current Agreement, which provides:

"Established positions will not be discontinued and new ones created under the same or different title 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."

It is evident that the Carrier, when it discontinued the position of General Clerk and bulletined the position of Yard Clerk merely changed the name of the position. The duties remained the same. Such a bulletin is ineffective under the Agreement to change the rate of the position.

In so holding we do not infer that a carrier cannot discontinue a higher rated position when the need of the services of that position no longer exist and establish a lower rated position which under its classification will fill the needs of the carrier. But such changes must be made in accordance with the Agreement and, if they are not so made, they constitute a violation of the Agreement. The Carrier will not be required to employ a greater force than is necessary to efficiently handle its business, nor will it be required to employ higher rated personnel than is necessary in the efficient handling of its business. The Agreement does not nullify this prerogative of management. It merely requires that such prerogative be exercised in the manner prescribed by the Agreement to which the Carrier has subscribed.

**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 Agreement was violated as charged.

#### AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: H. A. Johnson,  
Secretary

Dated at Chicago, Illinois, this 22nd day of May, 1947.