

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Joseph L. Miller, Referee

PARTIES TO DISPUTE:

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

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

(Guy A. Thompson, Trustee)

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

(a) The Carrier violated the Clerks' Agreement at Beaumont, Texas, beginning September 15, 1945, when it abolished the position of Bill Clerk, rate \$7.02 per day, and assigned the duties to the position of Expense Bill Clerk with rate of only \$6.42 per day. Also

(b) Claim that the Carrier be required to increase the rate of pay for the Expense Bill Clerk from \$6.42 to \$7.02 per day retroactive to September 15, 1945, plus subsequent increases in rates of pay.

EMPLOYEES' STATEMENT OF FACTS: On September 14, 1945, and prior thereto there were two positions in the Beaumont Freight Office, among others, designated as Bill Clerk and Expense Bill Clerk. The positions were rated at \$7.02 and \$6.42 per day respectively.

ment was further violated by the Carrier in assigning some of the work to two newly created clerk-stenographer positions at lower rates of pay.

It is not disputed that the discontinued position of Statistician was within the scope of the Clerks' Agreement and held by Clerk J. P. Dreisbach at the time of its discontinuance. It is claimed that the duties of this position were assigned to R. E. Gaugh who held a newly created excepted position designated as Chief Statistician and to employees McNally and Johnke who were assigned to two newly created clerk-stenographer positions with the scope of the Clerks' Agreement."

"The record is quite conclusive that Clerk McNally performed none of the duties of the abolished position and that Clerk Johnke performed work formerly done by Dreisbach requiring about one hour's time each month. In view of the fact that Johnke's position was within the scope of the Clerks' Agreement also, we fail to see where the Organization has a justifiable complaint as to the assignment of this work to Clerk Johnke."

The Board denied the Employees' claim.

In the above case covered by Award 2352 a higher rated position was discontinued and some of the work was assigned to a newly created lower rated position. Notwithstanding that fact, however, the Board denied the Employees' claim, stating that "In view of the fact that Johnke's position was within the scope of the Clerks' Agreement also, we fail to see where the Organization has a justifiable complaint as to the assignment of this work to Clerk Johnke."

In the case under consideration no new lower rated position was created to take over work from the discontinued position.

Award No. 2353 covers a case similar to the case referred to above covered by Award No. 2353. The following is quoted from "Opinion of Board" in Award 2353 which also denied the Employees' claim:

"The Carrier in the exercise of its managerial prerogative could change its plan for assigning its motive power. And in so doing, it could properly discontinue any position which had no duties remaining to be performed. And we think also that the Carrier could properly assign additional duties to others within the Clerks' Agreement. It may not, however, assign work within the scope of the agreement to employees in excepted positions. It is clear from the record, in applying these rules to the case before us, that the Carrier did not violate its contract with the Clerks. It is not pointed out by the Organization where an excepted employee is doing any specific work that Derr was doing when in the position of Power Distributor. General assertions unsupported by facts are not sufficient to sustain an affirmative award."

When consideration is given to all the facts and circumstances involved in the instant case, specifically, the fact that neither Rule 52 nor Rule 50 relied upon by the Employees is involved or has been violated as alleged by the Employees; no position discontinued and a lower rated position created to do the work performed by the discontinued position; together with the "Opinion and Findings" of the Board as expressed in Awards No. 974, 2352, and 2353, it is evident that the contention and claim of the Employees in the case under consideration is without basis.

Therefore, it is the position of the Carrier that the contention of the Employees should be dismissed and the accompanying claim accordingly denied.

OPINION OF BOARD: On September 9, 1942, the Carrier bulletined a vacancy in the position of Expense Bill Clerk at the Beaumont, Texas, freight station with the following "brief description of duties," in accordance with Rule 9 of the then prevailing agreement with the Organization:

"Expense all freight bills inbound and outbound; bill and post all MIT records; all outbound billing; handle special collection sheets; handle correspondence for agent and rate desk."

The rate of pay was set at \$5.70 per day.

On May 1, 1943, the Carrier bulletined a new position in the same station, entitled Bill Clerk, with the following brief description of duties:

"Check freight bills, rate and bill outbound freight, carload and LCL, post transit records, issue correction notices, handle correspondence pertaining to bill desk and other duties pertaining to the position."

The rate of pay was set at \$6.30 per day.

On September 12, 1945, the Carrier, by bulletin, confirmed the abolition of the Bill Clerk's position, effective September 14, 1945, and stated that the "remaining duties, consisting of making waybills, will be assigned to Expense Bill Clerk." The record discloses that, before the position of Bill Clerk was established, the Expense Bill Clerk made waybills.

Although the record contains a great deal of argument, pro and con, as to whether the Carrier was justified in abolishing the Bill Clerk's position, the Organization's claim is that the Carrier could not, under the Agreement of November 29, 1944, abolish it without simultaneously raising the rate of the Expense Bill Clerk to that of the Bill Clerk. The second claim calls for payment of the increased rate (from \$6.42 to \$7.02) thereafter.

The Carrier's principal argument is that the Expense Bill Clerk had made waybills before the position of Bill Clerk was created. Why then should his pay be increased for duties which he carried, by agreement, at the lesser rate?

It should be noted here that the Carrier, in its statement pointed out that two additional duties of the Bill Clerk were returned to the Expense Bill Clerk at the time the former position was abolished: (1) posting of transit records and (2) handling of correspondence. "Subsequently, due to the time of the Expense Bill Clerk being utilized in the billing of freight," these duties were assigned to the position of General Clerk. Checking of freight bills also was assigned to a General Clerk, although the record is not clear as to whether this change was made at the time the Bill Clerk's position was abolished or at some later date.

In other words, it appears that for an unspecified time after the Bill Clerk's position was abolished, the Expense Bill Clerk was doing all, or nearly all, the work of the two positions and that this situation was changed only when it was found that the Expense Bill Clerk was so busy with his billing he didn't have the time to handle all the other duties he had been assigned.

In the light of the facts in the two paragraphs *supra*, it was contended on behalf of the Carrier that the most reparation this Board should award, if any is called for, would be to raise the rate of the Expense Bill Clerk for that period between the date the Bill Clerk's position was abolished and the date the duties mentioned above were given to General Clerks.

The Carrier cites several awards of this Board in support of its contentions. (Awards 974, 2352, 2353).

The Organization points to Rules 52(b) and 50(a), read together, as they must be, to support its claim. Rule 52(b) says, "Where the duties of a particular position materially decrease in volume justifying abolishing the position the remaining duties will be reassigned in accordance with Rule 50." Rule 50(a) says, "Employees . . . permanently assigned to higher rate . . . work shall receive the higher rates for the full day while . . . performing such work . . ."

The Organization contends that the Carrier placed a higher rating on the work the Expense Bill Clerk had been performing while it was being performed by the Bill Clerk. Therefore, when it was turned back, the higher rate should have gone with it under the rules cited.

This Board agrees.

The remaining question is whether the higher rate should have been continued after certain duties (performed by the Bill Clerk and turned over to the Expense Bill Clerk after the former's position was abolished) were given to General Clerks. The record is devoid of any relative evaluation of these various duties. However, in this specific case, the Board is inclined to the opinion that waybilling is the key to the question and, it will be recalled, way-billing was retained by the Expense Bill Clerk after all the changes in duties. Therefore, the Organization's second claim is sustained as presented.

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

The Carrier violated the Agreement to the extent indicated in the Opinion.

AWARD

Claims sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary

Dated at Chicago, Illinois, this 23rd day of September, 1947.