

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**

**THE ATCHISON, TOPEKA AND SANTA FE RAILWAY
COMPANY**

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

- (a) That Clerk Wilbur R. Kyle shall be given credit for clerical experience accumulated while serving in the Army of the United States, and,
- (b) That Wilbur R. Kyle shall be paid the established rate of pay of the position which he occupied retroactive to April 1, 1946.

EMPLOYEE'S STATEMENT OF FACTS: Mr. Wilbur R. Kyle is employed in the Superintendent's office at Newton, Kansas, as Claim Clerk, Position No. 83, rate of pay \$7.19 (Now \$8.67) per day and has a Class 1 seniority date of May 21, 1942.

He was inducted into the Army of the United States on December 10, 1942, and at that time had accumulated a total of 173 days clerical experience with the Carrier and was being compensated at the intermediate rate of pay of the position he occupied. Mr. Kyle served thirteen months in the Army as a Clerk-Typist, three months as a General Clerk, two months as an Administrative Non-Commissioned Officer and eleven months as Chief Clerk, making a total accumulation of twenty-nine months clerical experience he gained while in the Army.

Mr. Kyle was Honorably discharged from the Army on November 1, 1945, and returned to service with the Carrier on January 7, 1946. Upon resuming duty he was given credit for the additional clerical experience he had accumulated while in the Army and advanced to the established rate of his position as required by the Clerks' Agreement. On April 1, 1946, Mr. Kyle was reduced to the intermediate rate of pay of the position he occupied with the explanation that the Carrier was no longer going to recognize the clerical experience he accumulated in the Army. In other words, after recognizing the clerical experience accumulated by Kyle while in the Army and compensating him at the established and proper rate of his position for seventy-one days, Carrier then reversed its position, reduced his compensation to the intermediate rate, or 64¢ per day less than the established rate.

Attached hereto and made a part hereof and identified as Employees' Exhibit "A" is photostatic copy of Separation Qualification Record issued

OPINION OF BOARD: Clerk Wilbur R. Kyle is employed in the Superintendent's office at Newton, Kansas, as a Claim Clerk with a seniority date of May 21, 1942. On December 10, 1942, he was inducted into the Army. While in the Army he served thirteen months as a Clerk-Typist, three months as a general clerk, two months as an Administrative Non-Commissioned Officer and eleven months as Chief Clerk, a total of twenty-nine months of clerical experience. It is the contention of Clerk Kyle that he is entitled to credit for his clerical experience in the Army in determining his rate of pay under the provisions of Article XI of the current Agreement. Applicable provisions of the rule provide:

"Section 2-a. Employees hired for or promoted to clerical positions, who have had less than six (6) months experience in railroad clerical work or clerical work of a similar nature in outside industries, shall be paid a rate of 96¢ per day (\$24.48 per month) less than the established rate of the position until they accumulate six (6) months' clerical experience, when they will be advanced to a rate of 64¢ per day (\$16.32 per month) less than the established rate of the position. Upon the accumulation of eighteen (18) months' clerical experience they will be advanced to the established rate of the position.

"Section 2-b. Employees hired for or promoted to clerical positions, who have had six (6) months and less than eighteen (18) months' clerical experience, as described in Section 2-a, shall be paid a rate of 64¢ per day (\$16.32 per month) less than the established rate of the position until they accumulate eighteen (18) months' clerical experience, when they will be advanced to the established rate of the position."

Clerk Kyle completed his first six months' clerical service in November, 1942, before going into the Army and was advanced to the rate of 64¢ per day less than the maximum rate. On his return to the service of the Carrier in January, 1946, the Carrier continued him at the same rate of pay. Kyle contends he should receive the maximum rate because of his twenty-nine months clerical service in the Army.

It is the contention of the Carrier that the only clerical experience that can be credited under the rule is that which he attained in railroad clerical work or clerical work of a similar nature in outside industries prior to being hired for or promoted to a clerical position. In construing the rule, we must, of course, consider its purpose and what the parties intend to accomplish by it.

It seems to us that the rule was established solely as a means of determining the rates of pay of positions within it, based on clerical experience. If the employe has less than six months' clerical experience, he was entitled to the rate provided for that class. If he had more than six and less than eighteen months' clerical experience, he was entitled to the pay of that class. If he has more than eighteen months' clerical experience, he was entitled to the maximum rate provided. The rule itself permits the crediting of experience in clerical work of a similar nature in outside industry. From a practical standpoint, it would make no difference to the Carrier when the experience was attained by the employe. That fact that he had the experience is the important thing so far as the Carrier is concerned. In presenting its contention that only clerical work of a similar nature acquired before the employer-employee relationship was established is contemplated by the rule, the Carrier seeks a literal interpretation of the Agreement although no reason has been pointed out why after acquired experience is any less valuable to the Carrier than that previously obtained.

The Carrier relies upon the strict meaning of the words "employees hired for or promoted to clerical positions" as sustaining its contention that only new employees or those newly promoted to clerical positions are entitled to the benefits of the rule. We could say with much more logic that the employe's service ended when he was inducted into the Army. While it is true

that seniority rights to future employment were given him, he was not an employe of the Carrier while he was in the Army. Consequently, when he returned to the service of the Carrier, he again entered its employment. He then came within the class of "employees hired for or promoted to clerical positions". It does not seem reasonable to us that eighteen months clerical work of a similar nature in outside industries by a new employe is of any more value to the Carrier than that acquired by a former employe on leave of absence or while laid off by reduction of force. Clearly, the rule intended that the rate be fixed on the basis of previous "experience in railroad clerical work or clerical work of a similar nature in outside industries". When the experience is gained is not important in accomplishing the real purpose of the rule. A proper interpretation of the rule does not permit the drawing of such distinctions. We think the inclusion of similar clerical experience attained in the Army was intended by this rule whether acquired before or after the initial establishment of the employer-employe relationship. Clerk Kyle is therefore entitled to credit for any experience gained which is within the rule.

Carrier contends that the Army is not an outside industry within the meaning of the rule. The word "industries" was here used as a generic term and includes service in the Army. The limiting words were "clerical work of a similar nature" rather than the words "in outside industries".

Carrier further contends that the work performed by Clerk Kyle in the Army was not "clerical work of a similar nature" within the meaning of the rule. His Separation Qualification Record is sufficient to make a prima facie case. There is no evidence to the contrary. In addition thereto, the Carrier did not question the similarity of the work on the property. It was not until the case was presented here that this point was pressed. Ordinarily one who mends his hold after an appeal has been taken to this Board will be permitted no advantage to be gained thereby. The proof of similarity of the work performed in the Army is sufficient under the circumstances here shown.

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 (a) sustained. Claim (b) sustained retroactively to January 7, 1946.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 30th day of June, 1948.