**Award No. 4034**

**Docket No. CL-3999**

# NATIONAL RAILROAD ADJUSTMENT BOARD

## THIRD DIVISION

**Jay S. Parker, Referee**

---

## PARTIES TO DISPUTE:

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

## DULUTH, MISSABE AND IRON RANGE RAILWAY COMPANY

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

(a) When on March 4th, 1946, it created the position of Supply Clerk and Machine Operator, rate of pay $178.76 per month, and

(b) That the correct rate of pay for the position of Supply Clerk and Machine Operator, on March 4th, 1946, was $193.76 per month, and

(c) That Frank L. Heim and all other employes working on the position of Supply Clerk and Machine Operator, subsequent to March 4, 1946, shall now be made whole for all wage loss suffered as a result of the violation, in the amount of $15.00 per month since March 4, 1946, and

(d) That the position shall now be re-bulletined at the correct rate of pay, which is now, owing to National wage increases granted in 1946, $231.50 per month.

EMPLOYES' STATEMENT OF FACTS: Attached hereto and marked employes exhibit (a), copy of bulletin, dated February 23, 1946, abolishing eleven positions in the Payroll Accounting Department and creating in lieu thereof eleven new positions.

No decrease was made in the total number of employes in the Payroll Accounting Department at the time. There was no decrease in the volume of work performed in the department, rather there was a substantial increase in the amount of work, owing to work being brought into the department from the Treasurers Office, Engineers Office, Ore Dock Office and Coal Dock Office.

Your Honorable Board will please note that by abolishing the eleven positions and creating new positions, with other titles and at lower rates of pay, the carrier effected a substantial monetary saving.

The position in dispute had been in existence for approximately nine months and for several months prior to March 4, 1946, was paid at the rate of $193.76 per month. Under the guise of abolishing a position that had long since ceased to exist, the rate of pay was reduced in the amount of $15.00 per month. There was no change made at the time in the manner of performing the work of the position. The same employe, on the position, owing to the abolition of the eleven positions of Timekeepers, was forced

ber and kind of positions that are necessary to the successful operation of a decision of the Carrier to make no rate changes until some reasonable basis for it could be worked out was definitely to the advantage of the employes. For example, Mr. Heim, claimant in this case, benefited financially during the entire transition period.

As to the fundamental principle involved in this claim, the Carrier believes your Honorable Board will not dispute its right to abolish and establish positions when it is done on a legitimate basis and to fix salaries on such new positions as may be established provided due consideration is given to applicable agreement rules. We further believe you will agree with the principle that there is no agency better qualified to determine the number and kind of positions that are necessary to the successful operation of a railroad than the management of that particular railroad. We steadfastly hold that the changes made in the Payroll Accounting Department due to the introduction of the machine system were proper in every detail and in the absence of any showing that any agreement rule or rules were violated in the establishment of the new position or the rate of pay, it is our contention that the claim is without merit and should be denied.

(Exhibits not reproduced.)

**OPINION OF BOARD:** The Claimant in this case was regularly assigned to the position of Assistant Shop Timekeeper in the railroad's Pay Roll Accounting Office, Duluth, Minnesota, at a rate of $193.76 per month. After installation of a new mechanized accounting system, namely Burroughs Adding Machines and the McBee Key Sorting System, the Carrier by Bulletin abolished the position of Assistant Shop Timekeeper, along with ten others, effective March 4, 1946. At the same time it bulletined the creation of eleven new positions at Duluth, including the position of Supply Clerk and Machine Operator, rate $178.76 per month. Claimant bid in and was assigned to such position. He now claims the Carrier violated the Agreement in creating the position at the rate of $178.76 and seeks to recover the difference between that rate and the rate of pay of his old position plus whatever additional may be due by reason of National wage increases.

Except as heretofore indicated to the contrary, the facts giving rise to this controversy are identical with those fully set forth in Award **4033**, this day rendered. In many respects the rights of the Claimant depend upon the same governing principles as were therein announced. Therefore, by reference we make the opinion in that award, to which we adhere, a part of this opinion and so far as its facts and principles are applicable to the instant situation reaffirm what there said and held.

The essential difference between this case and Award **4033** supra, springs from the fact the record does not disclose, indeed Claimant does not seriously contend, that the newly created position which he bid in and now holds covers the same class of work and was established for the purpose of reducing the rate of pay of the old position formerly occupied by him. For that matter he could not hope to successfully do so. It appears from the record in this and the other case mentioned that by reason of the mechanical changes made in the Carrier's office there was no longer any need for Claimant's old position and that such position had been abolished and the work thereof assigned to a position of Clerk-Deductions and Vacations, embracing all timekeeper's duties under conditions and circumstances not here subject to complaint. It therefore follows that Rule 38(b) is not a factor in this case although it was decisive in the other.

Claimant really bases his right to relief upon three propositions to which we are about to refer. He first contends the rate of pay on his present position was established by Carrier's own action in operating under the new set-up for approximately nine months with positions, rates of pay and occupants of positions under the old set-up unchanged. We decided a similar contention adversely to Claimant's position on the point in question in Award **4033**, supra, and since we discern no sound reason for changing our views pertaining thereto, need only reaffirm what was there held on the same subject.

A second contention, that failure to promptly bulletin this and other positions in violation of Rule 9 was likewise denied in the same award and requires no further attention.

The third contention advanced by Claimant is that the Carrier violated the Agreement in fixing the rate of pay of the new position at $178.76 per month. This claim requires a construction of Rule 38(a) of the instrument in question which reads:

> "(a) The salaries for new positions will be in conformity with the salaries of analogous positions (of similar kind and class) in comparable localities."

Examination of the entire record is not required in order to determine what effect was made to comply with the foregoing rule. The Carrier itself makes such action unnecessary by conceding the factual situation with respect thereto. In its reply to the Employes' rebuttal, after asserting the rate fixed by it was fair and equitable for the service rendered it makes the following statement: "It is acknowledged by the Carrier that no other position on this property compares with the one here under consideration, therefore, the rate of $178.76 per month was arrived at." Claimant does not deny and makes no claim there were other comparable positions then in existence on the property. He does, however, suggest the salary he had been receiving should therefore be the criterion under Rule 38(a). We do not agree. Such rule does not provide or even contemplate that a position no longer in existence is an analogous position in a comparable locality or is to be regarded as a criterion for establishing the rate of a new position. Its requirement is that wages fixed shall be in conformity with presently filled analogous positions (Award 2683) in comparable localities within the jurisdiction covered by the terms of the Agreement (Award 3483). Since there was no way of determining the rate of pay under the criterion imposed by Rule 38(a) we think the Carrier's action in fixing the salary on the basis it says it did was justified.

In so concluding we are not unmindful of Claimant's argument to the effect there are no rules in the Clerks' Agreement giving the Carrier the right to set rates of pay by unilateral action on newly created positions. The converse is the rule. The fallacy in Claimant's position rests in the fact that primarily the right to fix wages is a prerogative of management which is lost only by contractual relinquishment and can always be exercised unless its freedom of action in that respect clearly appears, from the terms of the instrument relied on as having that effect, to have been delegated to others.

Failing to find the Carrier violated any rules of the Agreement relied on as grounds for an affirmative award, our duty is to deny the claim.

**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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 9th day of August, 1948.