

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 Clerk's Agreement:

(a) When on March 4, 1946, it abolished the position of Compensation Clerk, rate of pay \$203.76 per month, and created lieu thereof the position of Compensation and Distribution Clerk, rate of pay \$190.00 per month, and

(b) that Miss Mildred Rapp and all other employees working on the position of Compensation and Distribution Clerk, since March 4, 1946, shall now be paid at the correct rate of pay, in the amount of \$13.76 per month increase, retro-active to March 4, 1946, until such time as the violation is corrected.

EMPLOYEES' STATEMENT OF FACTS: Attached, hereto, copy of bulletin dated February 23, 1946, abolishing eleven positions in the Payroll Accounting Department, and creating in lieu thereof eleven new positions in the same department.

Shown on this exhibit, as being abolished, are two positions of Compensation Clerk, rate of pay \$203.76 per month. Two positions of Compensation and Distribution Clerk being created at the same time, rate of pay \$190.00 per month.

Claim was filed and numerous conferences held with respect to the proper rates of pay on the various positions created. On January 29, 1947, an agreement was entered into by the Organization and the Carrier, increasing the rate of pay of the position of Compensation and Distribution Clerk No. 2, in the amount of \$13.76 per month retro-active to March 4, 1946. This position, on which agreement was reached in conference has been held by an employee junior to the employee bidding in the position of Compensation and Distribution Clerk No. 1. The Carrier has refused to restore the rate of pay on the position of Compensation and Distribution Clerk No. 1.

POSITION OF EMPLOYEES: There is in evidence an agreement between the two parties, bearing effective date of April 16th, 1941, from which the following rules thereof read:

"RULE 36

Positions (not employees) shall be rated and the transfer of rates from one position to another shall not be permitted."

of this clerk to compile Form B in its entirety which necessitated the assembling of hours of service and compensation of employes under their proper classifications. It was also the duty of this clerk to compile the monthly labor distributions covering train and engine service employes and, as previously stated, this required a full knowledge of all distribution accounts. To compile a labor distribution under the manual system required that all items of time which composed the distribution must be segregated to the proper accounts and balanced against the wages paid.

Under the new or machine system, this position required little more than straight sorting and copy work and about the only qualification necessary was accuracy as all extensions and balances were mechanically done. The incumbent of this position no longer was required to have the knowledge of compensation classifications or distribution accounts as this information was placed on the daily time slips by the timekeepers before they were turned over to the Compensation and Distribution Clerk.

When discussing the claim in conference, the employes in support of their position that the monthly rate of \$203.76 should have been maintained, argued that while they recognized there was a change in the duties and method of doing the work under the new system, it was not sufficient, in their opinion, to warrant the reduction of \$13.76 per month. To this the Company could not agree for reasons previously given in this submission. The employes also stressed the fact that the Company had agreed to restore the former rate of \$203.76 per month to Position No. 2 in the bulletin of February 23rd, 1946, as an argument for doing the same on Position No. 1 because it was stated in the bulletin that the duties of the two positions were the same.

It is true that in January, 1947, the Carrier did agree to restore the rate of \$203.76 to Position No. 2, Compensation and Distribution Clerk. This was done, however, because additional duties had been placed on that position which were not contemplated at the time the bulletin was issued with the result the duties were not the same as those of Position No. 1, but corresponded more closely to the duties of the position as they existed prior to the introduction of the machine system.

In these circumstances and in the interest of fairness, the Carrier agreed to restore the former rate. The Carrier insisted at that time and still maintains that the duties of Position No. 1, held by Claimant Rapp, did not justify a rate of \$203.76 per month based on the class and kind of duties which were required. The fact that the Carrier did readjust the rate of Compensation and Distribution Clerk No. 2 should be evidence of the willingness of the Carrier to be fair in cases where adjustments are warranted and such action by the Carrier should not be used in the instant case to secure an increased rate when there is no justification for it.

Again the Carrier wishes to point out that there is definitely no indication of any rules violations associated with this claim, therefore, respectfully request that the claim be denied.

Exhibits not reproduced.

OPINION OF BOARD: February 23, 1946, claimant was regularly assigned to the position of Compensation Clerk in Carrier's Pay Roll Accounting Department at Duluth, Minn., with rate of pay \$203.76 per month. On account of the installation of Burroughs Accounting Adding Machines and the McBee Key Sorting System in its office at Duluth, the Carrier by Bulletin abolished claimant's position along with ten others in the office, effective March 4, 1946. In the same Bulletin Carrier noticed the creation of eleven new positions in such office, including one designated as Compensation and Distribution Clerk, rate \$190.00 per month. Claimant applied for and was regularly assigned to this new position. The claim is for the difference in pay of the two positions retroactive to March 4, 1946.

Other than as heretofore stated, the facts of this case are no different than those set forth in the Opinion of Award 4033, this date rendered. Rules

involved and governing principles are also identical. We have carefully examined the record and find the new position of Compensation and Distribution Clerk covered the same class of work as the position of Compensation Clerk and under our interpretation of Rule 38 (b) of the current agreement was created for the purpose of reducing the rate of pay of the latter position. The reasoning and the result in Award 4033, to which we adhere, require an affirmative award in this case. Therefore, the Carrier is obliged to pay claimant \$13.76 per month from March 4, 1946, until the rate of the position now assigned to her is changed in accordance with the current agreement and we so hold.

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 Carrier violated the Agreement.

AWARD

Claim sustained.

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.