

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

H. Nathan Swaim, 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 of Railway Clerks.

a. That the carrier violated the Clerks' Agreement when on October 15, 1947, it bulletined the position of Stock Record Clerk, Store Department Office, Two Harbors, Minnesota at the rate of \$288.12 per month, and

b. That the correct pay of the position is \$298.12 per month, and

c. That Miss Nan E. Nelson shall now be made whole for wage loss suffered, by reason of the violation, in the amount of ten dollars (\$10.00) per month, subsequent to October 20, 1947 until such time as the violation is corrected.

EMPLOYEES' STATEMENT OF FACTS: On or about October 10, 1947, the incumbent of the position of Stock Record Clerk, Mr. J. A. Anders, rate of pay \$318.12 per month left the service of the carrier. The position was bulletined at the rate of \$288.12 per month and assigned to Nan E. Nelson.

The Organization filed a claim that this was a violation of the Clerks' Agreement and an improper rate of pay. The claim was denied by the Director of Personnel.

POSITION OF EMPLOYEES: This dispute and accompanying claim arise from and involve the application of a certain Memorandum of Agreement, dated April 17, 1941 and revised April 1, 1944, commonly and hereafter in this submission referred to as "Appendix A," providing for cut backs in rates of pay of certain positions covered by the agreement between the two parties.

On the original "Appendix A" the position of Stock Record Clerk is shown with an incumbent rate of \$190.00 per month and a cut back to \$180.00 per month when filled under Agreement rules.

On the revision of "Appendix A" dated April 1, 1944, this position is shown with an incumbent rate of \$238.76 per month and a cut back to \$218.76 provided for when filled under Agreement rules.

On August 1, 1947, the carrier by unilateral action increased the rate of the position from \$276.50 to \$286.50, which with the national wage increase granted September 1, 1947 gave a rate of pay to the incumbent of \$318.12 per month and we contend that under agreement rules should have

Frankly, by the act of negotiating the agreements, Carrier's Exhibits "A" and "B," the Carrier is strongly of the opinion that they represent an admission on the part of the organization that the employees covered by the agreement are being rated and not the positions. This the organization was apparently willing to concede in order that they might secure from the Carrier Rule 37 of the 1941 agreement which would cover all positions other than those mentioned in the two memoranda of agreement (Carrier's Exhibit "A" and "B").

We respectfully request that the claim be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: This case involves the interpretation and application of Rule 37 of the Current Agreement between the parties and also the interpretation of their special Memorandum of Agreement which became effective April 1, 1944.

Said Rule 37 provides that "Positions (not employees) shall be rated * * *" and the Memorandum of Agreement provides:

(a) Effective April 1, 1944, the agreement dated March 29, 1941 and effective April 17, 1941, which established the right of the Railway Company to reduce rates of pay of certain positions under certain conditions and which established an apprentice rate \$15.00 less than the rate of minimum paid clerical jobs, is hereby cancelled.

(b) Effective with the date of this agreement Appendix "A" which is attached hereto is a part of this agreement and the Company may at its discretion adjust rates downward as indicated on the Appendix when such positions are vacated and filled by employees under agreement rules. If the Company elects not to take advantage of the reduction authorized in Appendix "A" they will be privileged to reduce the rate at a later date to an employee other than the incumbent."

It is evident from this and the preceding Memorandum of Agreement that both parties understood that when rates were once established for positions they could not be lowered except by agreement of the parties.

The parties, therefore, by these two Memorandum Agreements provided that the established rates of the specified positions might be lowered by the Carrier "as indicated on the appendix when such positions are vacated" and filled by other employees.

The appendix to the Memorandum Agreement of April 1, 1944, specified a \$20.00 per month cut-back on the position here in question.

When the position was vacated it was bulletined at \$30.00 per month less than the incumbent had been receiving. The Claimant was assigned to the position and now makes claim for the \$10.00 per month difference.

The Carrier contends that the rate bulletined was only \$20.00 per month less than the negotiated rate for the position; that the \$10.00 difference represents a voluntary increase by the Carrier; and that what it voluntarily gave it should be able unilaterally to take away.

The Carrier contends that the parties intended that the differential or cutback indicated in the Appendix should be increased by the amount of any increases in the rate which the Carrier voluntarily made without negotiation with the Organization; and that this is shown by the fact that the 1941 Memorandum Agreement provided for only a \$10.00 cut-back on this position while the 1944 Agreement provided for the \$20.00 cut-back which included a voluntary \$10.00 raise of the rate by the Carrier between the dates of the two Agreements.

While the parties could have agreed to increase the cut-back by the amount of any subsequent voluntary increases, no such intention is shown

by the language of the 1944 Memorandum Agreement. The cut-back indicated on the appendix to that Agreement for this position was \$20.00.

The voluntary unilateral increase of \$10.00 per month by the Carrier under the Rule 37 of the Current Agreement constituted an increase in the rate of that position.

It was, therefore, a violation of the Agreement for the Carrier to reduce the rate of the position \$30.00 when the position became vacant and was filled by the Claimant.

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 applicable Agreements as claimed.

AWARD

Claims (a), (b) and (c) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 24th day of November, 1948.