

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

DETROIT, TOLEDO AND IRONTON RAILROAD COMPANY

STATEMENT OF CLAIM: (1) Claim of the System Committee of the Brotherhood that the Carrier violated its agreement with the Brotherhood when by Bulletin 5 of April 15, 1947, without negotiation, conference or agreement with the organization, it advertised a position titled "Comptometer Operator and Waybill Abstracter" with two rates of pay, i.e., \$8.00 and \$9.27 per day, and

(2) By reason of such violation, the Carrier shall now be required to compensate Mrs. Dee B. Poyer for the difference between that which she earned as "Lead Comptometer Operator" or \$8.29 per day and that which she would have earned on the position in question had that position been correctly classified and rated at \$9.27 per day for all time from April 28, 1947 to and including May 3, 1947 and from May 19, 1947, the date Mrs. Poyer returned from leave of absence, to and including July 21, 1947, the date the position was abolished, and

(3) By reason of such violation, the Carrier shall now be required to compensate all other employees involved in or effected thereby for all wage losses sustained from April 28, 1947 to and including July 21 1947, the date the position was abolished.

EMPLOYEES' STATEMENT OF FACTS: On April 15, 1947, the Carrier issued the following bulletin:

"Clerks' Agreement Seniority District No. 3 Bulletin No. 5
Dearborn, Michigan
April 15, 1947

To Employees Concerned:

The following position is hereby bulletined for bids in accordance with Rule 9 of the Clerks' Agreement. Bids will be accepted by the undersigned up to 9:00 A. M., April 22, 1947. Bids must be submitted on Form M-111.

Location	General Offices, Dearborn	Title of position	Comp. Operator and Waybill Abstracter
Daily rate of pay	\$8.00 as Comp. Oper. \$9.27 as Waybill Abstracter		
Hours of assignment	Beginning date	Within 5 days after	4-22-47
	8:30 A. M.-5:00 P. M.		

(8) We respectfully point out to your Honorable Board that the Brotherhood is claiming a rate of \$9.27 per day for a period of time. This rate could not be supported since Mrs. Lenk, who held the position, worked about one-third of her time for \$9.27 per day and two-thirds of her time for \$8.00 per day.

CARRIER'S CONCLUSIONS: It is our conclusion that a claim of this kind is entirely without foundation. Certainly no one has been damaged and the terms of the contract have not been violated. We respectfully request that your honorable body deny this claim.

Exhibits not reproduced.

OPINION OF BOARD: This case presents the question of whether the Carrier can establish and advertise a combination position including two types of work, with the established rate stated for each type of work but without fixing and advertising the amount of time the position will require at each type of work.

Rule 9 of the Current Agreement between the parties provides:

"All new positions and vacancies of more than thirty (30) calendar days' duration will be promptly bulletined in agreed-upon places accessible to all employees affected for a period of five (5) calendar days, bulletin to show location, title and brief description of position, rate of pay, assigned hours of service, assigned meal period, and assigned day of rest."

The purpose of requiring the bulletining of positions is to acquaint the employees with the position in order that they may determine whether they desire to bid for it. The parties have stipulated in the Rule here involved what facts the bulletin shall furnish. Included as a necessary fact is the rate of pay. Unless the rate of pay is so stated as to inform the interested employee how much the advertised position will pay he will not be able to intelligently determine whether he should bid for it.

The bulletin here in question advertised the position as combining two types of work, Comptometer Operator, and Waybill Abstracter, with a rate of \$8.00 per day as Comptometer Operator and a rate of \$9.27 per day as Waybill Abstracter. These were the established rates for these two types of work but the bulletin failed to state how much time would be required at each type of work so it would be impossible for an interested employee to know how much pay he could realize from the position. Such a bulletin does not comply with Rule 9 of the Agreement.

The Carrier cites Award No. 2925 of this Division as supporting its action here. In that case we said that under the rules there involved the Carrier might establish a dual position with two rates of pay. The position there was apparently filled by agreement without any bulletin so the question of a proper bulletin was not there raised.

In neither Award No. 1540 nor Award No. 1541 was the question of the bulletin raised or considered but in each of those cases the positions in question had fixed hours with fixed rates of pay for each class of work. Also it appears that in Award 1541 the basis for compensation was fixed pursuant to two special agreements between the parties.

Where the hours and rate for each class of work are definite the compensation is then definite and can be so bulletined.

The Carrier also cites two bulletins which it issued in 1944 in which two classes of work with two rates of pay were advertised on the same position. One of these, Bulletin No. 33, was similar to the bulletin here in question. The Organization failed to protest it as being a violation of the Agreement. The other bulletin so cited by the Carrier was Bulletin No. 5 which advertised a position with 5 days work at one rate and the 6th day at another rate.

The Carrier contends that the failure of the Organization to protest these two bulletins estops it from objecting in the present case. Only one of the bulletins so cited by the Carrier failed to inform the employee what the position would pay. The other gave definite information.

While the Organization would probably be estopped from questioning the Carrier as to Bulletin 33, the failure to protest that one bulletin should not be considered as a course of action which would amount to an interpretation of an ambiguous rule nor sufficient to estop the Organization from questioning the present bulletin. The failure of the Organization to protest that one bulletin has not caused the Carrier to do anything to its harm.

The Carrier insists that since it is not a large railroad it is necessary for it to have dual positions and so advertise them. If that be necessary to this Carrier it should seek to change Rule 9 to provide for such bulletins.

Claim (2) seeks for Mrs. Poyer, the senior employee who bid on the position, compensation for the difference between what she earned in the position she worked and the amount this position would have paid during the periods April 28, 1947 to and including May 3, 1947, and from May 19, 1947, to and including July 21, 1947, the date the position was abolished, if the position had been rated for full time at the higher of the two rates advertised.

The position was awarded to this Claimant while she was away on vacation and she was informed that to take the position it would be necessary for her to return before the expiration of her vacation and leave period. She then withdrew her bid for the position and it was awarded to the next highest bidder who filled the position until displaced by the Claimant on July 17, 1947.

Mrs. Poyer did not return from her leave of absence until May 19, 1947. Until that date she was not an available employee. However, when she withdrew her bid and the next senior employee was given the position, Mrs. Poyer thereby surrendered any claim she had to the position arising out of her bid. Her only possible claim would be for the period from July 17 to July 21, 1947. It is not denied, however, that each incumbent of the position was paid for the time spent at each class of work at the appropriate rate for that type of work. We, therefore, fail to see how this Claimant or any other employee has shown any wage loss sustained by reason of Carrier's violation of Rule 9 in the bulletining of this position.

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 as alleged in Claim (1). The Organization failed to show any wage loss as alleged in Claims (2) and (3).

AWARD

Claim (1) sustained. Claims (2) and (3) denied.

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.