

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Francis J. Robertson, Referee

PARTIES TO DISPUTE:

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

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY

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

(a) The carrier violated the Clerks' Agreement when on or about June 18, 1947 it substituted an electric tabulating machine known as Type 416 and declined to pay the operator of the newly installed machine the same rate of pay as was then applied to two other operators on Type 416 machines in operation in the same office and department, and

(b) The carrier shall now be required to compensate the operator of the newly installed machine the difference between the daily rate he has been paid and the daily rate paid the two (2) other operators of like machines in the same office (86¢ per day) retroactive to date the new machine was placed in operation.

EMPLOYES' STATEMENT OF FACTS: Prior to June 18, 1947 there was in operation in the office of Comptroller at St. Louis, Mo. various types of electric accounting machines among which were two known as Type 416, the assigned operators of these machines being W. L. Schmale and W. G. Gropp, both of whom were paid daily rates of \$9.00 per day. There was also in operation in the same office an older type of electric accounting machine known as Type 297 the assigned operator being S. L. Farrell who was paid a daily rate of \$8.14 per day.

Effective June 18, 1947 the outmoded machine, Type 297, was removed and a new Type 416 machine was installed in place thereof. Employee Farrell, operator of the old machine, was then assigned to the new machine, carrier failing and refusing to allow Mr. Farrell the same daily rate as was then being paid to Schmale and Gropp, operators of the same type machine located in the same office and department.

POSITION OF EMPLOYES: Current agreement between the parties contains the following rules:

"Rule 56.

Employees temporarily or permanently assigned to higher rated positions shall receive the higher rates while occupying such positions; employees temporarily assigned to lower rated positions shall not have their rates reduced. A "temporary assignment" contemplates the fulfillment of the duties and responsibilities of the position during the time occupied, whether the regular occupant of the position is absent

These are the same positions with the same rates except as adjusted by national agreements as are in existence today. There is one Roster 1 position on a night shift not involved in this case. The only change whatever involving the day force in this bureau now as compared with December, 1945 is the change to a later model machine. This change as shown by statement, Carrier's Exhibit "F" is no different than changes that have been made at various times since the bureau was established to take advantage of the latest model machines. There is no more justification for changing rates of pay on positions in this bureau because a different model machine is introduced than there would be to change the rate of a typist or a stenographer each time an improved model of typewriter was introduced. It does not change the character of the work in any way.

Employees, while handling this claim on the property, contended for payment under Rule 58—New Positions. It is the Carrier's position the claim as submitted, under conditions prevailing in this dispute, is not supported by the "New Position" Rule, nor by any other rule of the governing Clerks' Agreement, and being without merit, should be declined in its entirety.

Exhibits not reproduced.

OPINION OF BOARD: On or about June 18, 1947, in the Tabulating Machine Bureau in its Accounting Department at St. Louis, Missouri, Carrier replaced a tabulating machine known as IBM Type 297 with one known as IBM Type 416. Claimant Farrell (classification, Tabulating Machine Operator) who formerly used the old machine, was required to operate the new machine in the performance of his assigned work. There were two other positions of Tabulating Machine Operator in the same Bureau at higher rates of pay who operated Type 416 machines in the performance of their assignments. Employees contend that a new position was in fact created when the outmoded machine (Type 297) was removed and the new machine installed, identical to the two machines then being operated by the other two higher rated employees, and assert a violation of Rules 56 and 58 of the Agreement, which rules read as follows:

"PRESERVATION OF RATES

Rule 56. Employees temporarily or permanently assigned to higher rated positions shall receive the higher rates while occupying such positions; employees temporarily assigned to lower rated positions shall not have their rates reduced. A 'temporary assignment' contemplates the fulfillment of the duties and responsibilities of the position during the time occupied, whether the regular occupant of the position is absent or whether the temporary assignee does the work irrespective of the presence of the regular employee. Assisting a higher rated employee due to a temporary increase in the volume of work does not constitute a temporary assignment."

"RATES—NEW POSITIONS

Rule 58. The wages for new positions shall be in conformity with the wages for positions of similar kind or class in the seniority district where created."

There is disagreement between the Employees and the Carrier with respect to whether or not a Tabulating Machine Operator is exclusively assigned to a particular machine, Carrier contending that the force has been considered as having a group assignment to handle all tabulating work, and the machines are provided as a battery of tools for that purpose. Employees, on the other hand, insist that the tabulators have specific machines which they operate day in and day out and that except in cases of mechanical breakdown they do not move from one machine to another. In any event, it is conceded by the Carrier that Farrell is the principal operator of the newly installed machine. We do not believe that the conflict with respect to exclusive assignment is material to a disposition of the case, for whether Farrell be the principal operator or the exclusive operator of the Type 416 machine would not, in our opinion, change the operation of the applicable rules.

In order to arrive at a proper disposition of the claim presented in this docket it is essential to determine whether the rate of the position attaches to (1) the actual operation of the machine, or (2) the class of work which is done by the operator of the machine. At first blush it would appear that the operation of the machine was the work of the position and hence (1) and (2) would be identical. But that concept is not borne out by the history of the rate structure in the Tabulating Machine Department. It appears that said department has been in existence for a number of years and over the course of time many changes in the type of machine used therein have been made, and yet differentials in rates for tabulating machine operators have remained constant. The collective bargaining history over a twenty-five year period indicates that when new Agreements were negotiated, rate increases have not been sought on the theory that a change in the type of machine operated by the classification of Tabulating Machine Operator required revision of the rate structure. As a matter of fact, increases in rates of pay for such classifications have generally been on the basis of National Agreements. In 1927, for example, all machines were replaced by five printing tabulators. It seems a reasonable conclusion that at that time all machine tabulators operated the same machine and yet they received differing rates. It seems apparent, therefore, that on this property it was the class of work which determined the rates of the positions and not the mechanical contrivance operated to perform said work. The General Chairman of the Organization in a letter dated July 23, 1947, to Carrier's Comptroller admitted that the class of work remained the same as appears from the following quotation therefrom:

"It is true that the work is of the same class as it has been previously but you have substituted a machine that will turn out a lot more work and calls for more attention and we see no reason why the employees should not receive as much benefit from this in the way of increased wages as the company does in the way of increased production."

It seems apparent, therefore, that as the parties themselves have interpreted the rules by their conduct over the course of many years that a new position has not been created by requiring Claimant to operate the Type 416 machine after retiring the Type 297 from service and hence we find no violation of the rules cited.

We do believe that the quoted portion of the General Chairman's letter indicates ample reason for a re-negotiation of the rate of the position, but for reasons above stated, we do not believe that the Agreement rules as written and applied by the parties afford a basis for this Board to issue a sustaining Award.

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 did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 22nd day of March, 1949.