

**Award No. 5162**  
**Docket No. CL-5030**

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
**THIRD DIVISION**

Edward F. Carter, Referee

**PARTIES TO DISPUTE:**

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

**THE LAKE TERMINAL RAILROAD COMPANY**

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood that the Carrier violated the Clerks' Wage Agreement and the provisions and intent of the Clerks' Agreement when, effective April 1, 1948, it created position of Stenographer and Clerk at Lorain, Ohio, and rated the position at \$150.00 per month, and,

That Carrier shall now be required by appropriate order of the Board to establish a minimum clerical rate of \$218.03 per month effective April 1, 1948, and to which shall be added the increase effective October 1, 1948 of seven cents (7¢) per hour, and,

That the incumbent of the position and all others affected be reimbursed for wage loss sustained retroactive to April 1, 1948.

**EMPLOYEES' STATEMENT OF FACTS:** On March 25, 1948, through Bulletin No. 22, dated March 25, 1948, copy of which is attached as Employees' Exhibit "A", position designated as Stenographer-Clerk was established in the Superintendent's Office at Lorain, Ohio present rate \$150.00 per month, with duties described as "Female applicant preferred. Applicant must be proficient in taking and transcribing shorthand."

The actual duties on the position as described by the incumbent consist of the following:

Typing and Dictation for G. B. Weir, Superintendent; G. E. Johnson, Superintendent Car Service; E. L. Schafer, Ass't Supt. Car Service; R. J. Heyer, Ass't to Superintendent; R. O. Layport, Supvr. Safety & Emplmnt.

Operating duplicating machine, making up various forms for the listed officials from whom dictation is taken, filing, making out insurance cards, income tax forms, filling out new employment forms for new employees hired, receptionist duties and operates switchboard.

There are other positions titled stenographer that are presently rated at \$223.64 and \$252.00 a month respectively.

**POSITION OF EMPLOYEES:** There is in effect between the parties an agreement bearing effective date of February 1, 1945, which contains the following rules:

to in employees' Exhibit "C" and the Carrier should by appropriate order of this Board be required to establish the minimum clerical rate retroactive to April 1, 1948, and the employees ask this Honorable Board to sustain their claim.

**CARRIER'S STATEMENT OF FACTS:** There was established a new position of Stenographer-Clerk in the office of the Supervisor of Safety and Employment, April 5, 1948, at the rate of \$150.00 per month. This was a new position, and the rate of \$150.00 per month was arrived at because it was felt that rate was commensurate with the duties that would be required. This was a new department which was established November 1, 1946, and it was deemed necessary in April, 1948, to have someone in the office when the Supervisor was out on the property.

**POSITION OF CARRIER:** The occupant of this position performs the clerical work of the office and types of a few reports in connection with safety and employment. There is very little stenographic work required. Rule 14 of the Agreement reads as follows:

"Rates for New Positions"

The rates for new positions shall be in conformity with the rates for positions of similar kind or class in the same department in which created. (Underscoring ours).

There was no similar position in this department that the carrier could use as a yardstick to determine the rate. There is nothing in the Agreement fixing such a rate and the rate of \$150.00 was decided upon. We installed a one-position telephone switchboard in this office which created additional duties for this position, and therefore the rate of the position was increased effective October 1, 1949, to \$205.50 per month.

It is the opinion of the carrier, a rate of \$218.03 per month effective April 1, 1948, plus the increase of seven cents (7c) per hour effective October 1, 1948, is out of all reason. We therefore feel the claim should be denied, and we ask that this Honorable Board so hold.

(Exhibits not reproduced).

**OPINION OF BOARD:** On March 25, 1948, the Carrier bulletined a new position designated as Stenographer-Clerk in the Superintendent's office at Lorain, Ohio, and fixed the rate at \$150 per month. The Organization contends that the rate of the position is governed by Rule 14, current Agreement, which provides:

"The rates for new positions shall be in conformity with the rates for positions of similar kind or class in the same department in which created."

It is the contention of the Carrier that the position in question was a new position in the office of the Supervisor of Safety and Employment which it asserts is a department within the meaning of Rule 14. It is then pointed out that there is no position of similar kind or class in that department. We think the record shows that the Superintendent's office at Lorain is a department within the meaning of Rule 14. The bulletin advertising this new position so indicated. The office of the Supervisor of Safety and Employment is a subordinate division of Carrier's organizational set-up but it is not a department as contemplated by Rule 14.

The assigned duties of the new position were clerical and stenographic in their nature. By Rule 14, the rate of pay is that of positions of similar kind or class in the Superintendent's office at Lorain. Unless such a position exists in the Superintendent's office, the contract does not fix the rate of the newly created position of Stenographic-Clerk. The record is very in-

definite as to positions of similar kind or class in the Superintendent's office. We remand the case in order that evidence be produced on this point and consideration be given to its application to Rule 14.

The Organization asserts that the rate fixed by the Carrier is violative of the Fair Labor Standards Act and the minimum rates of pay therein provided. The Carrier denies any such violation. We think it is our duty only to interpret the contract before us and to enforce the contract as interpreted. If the Fair Labor Standards Act be violated, that Act provides the remedy for such violation.

**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 record is insufficient to determine the dispute.

#### AWARD

Claim remanded per Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: A. I. Tummon  
Acting Secretary

Dated at Chicago, Illinois, this 18th day of December, 1950.