

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Hubert Wyckoff, Referee

PARTIES TO DISPUTE:

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

RAILWAY EXPRESS AGENCY, INC.

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

(a) The Agreement governing hours of service and working conditions between the Railway Express Agency and the Brotherhood of Railway & Steamship Clerks, Freight Handlers, Express & Station Employees, effective September 1, 1949, was violated at the Memphis, Tennessee Agency, April 1, 1950, through improper abolishment of position 235, group 36, titled "Money Clerk", salary \$280.06 basic per month, and the duties and responsibilities formerly attaching thereto transferred to position 27, group 197, titled "Value Clerk", salary \$261.00 basic per month; and

(b) Employees A. M. Posey and J. H. Evans, who sustained salary loss as a result of improper displacement, shall be compensated as follows:

A. M. Posey.....\$22.45 basic

J. H. Evans 57.83 basic

representing earnings lost during the period April 1 to June 16, 1950, inclusive, on which latter date the duties and responsibilities attaching to position 235, group 36, were properly abolished.

EMPLOYEES' STATEMENT OF FACTS: Prior to April 1, 1950 there was in existence at the Memphis, Tennessee Agency, position 235, group 36, titled "Money Clerk", hours of assignment 5:00 P.M. to 1:30 A.M., meal period 10:00 to 10:30 P.M., days of rest Sunday and Monday, salary \$280.06 basic per month. This position was occupied by W. F. Pleasants, whose seniority dates from March 1, 1916. There was also in existence at the Memphis Agency, position 20, group 197, titled "Value Clerk", hours of assignment 3:30 P.M. to 12:00 midnight, meal period 8:00 to 8:30 P.M., days of rest Thursday and Friday, salary \$261.00 basic per month. This position was occupied by P. O. Martin, whose seniority dates from November 12, 1936.

March 27, 1950, position 235, group 36, was alleged to have been abolished, bringing about the following displacements:

Carrier is, however, asked to go further and reimburse employees Posey and Evans for alleged salary loss during their period in question. This claim is inconsistent with the claim entered in behalf of employee Martin, which claim recognized that the duties of the Money Clerk's position had disappeared to the extent that it was no longer necessary, but that some, not all, of the higher-rated duties formerly performed by the Money Clerk were temporarily performed by the Value Clerk and that he was entitled to an adjustment in his rate of pay. After this had been developed, adjustment was made in the rate of pay of the Value Clerk covering the period April 1, 1950, to June 16, 1950, under the provisions of Rule 80 of the Agreement, thus discharging the Carrier's obligation under the rules arising out of the abolishment of the Money Clerk's position and the series of displacements which followed. In other words, the claim of the Employees in behalf of Value Clerk Martin recognized the abolishment of the Money Clerk's position, while the claims filed in behalf of employees Posey and Evans deny that an abolishment took place.

The abolishment of the Money Clerk's position was in proper form and permissible under the rules of the Agreement, and the series of displacements which followed were in strict accordance with the seniority provisions of the Agreement. The claims of employees Posey and Evans therefore have no basis under the rules and accordingly should be denied.

All evidence and data set forth have been considered by the parties in correspondence and conference.

(Exhibits not reproduced.)

OPINION OF BOARD: The Carrier abolished a Money Clerk position and assigned some or all of its duties to a Value Clerk position the occupant of which was junior to seven employees who were displaced as a consequence of the abolishment. Only two of those displaced suffered monetary loss and they are the Claimants here asking the difference in salary between what they were paid before and after the displacements until June 17, 1950 when the Value Clerk position was abolished.

Among the original claimants were also the occupants of the Value Clerk position, both regular and relief, on whose behalf the Organization claimed the rate of pay of the Money Clerk position after the abolishment. The Carrier allowed this claim on the merits and not by way of compromise, but denied the two claims now before us.

FIRST. There are conflicting assertions in the record upon the question whether all or only some of the duties of the Money Clerk position were assigned to the Value Clerk position when the Money Clerk position was abolished. The record supports the Organization's contention in this respect. If, as the Carrier maintains, the Value Clerk's claim was allowed under Rule 80 (Preservation of Rates), this is an admission that the Money Clerk position still existed and that at least enough of the duties and responsibilities of the position remained to justify payment of the higher rate.

In these circumstances, we conclude that the abolishment was improper. Claimants are accordingly entitled to reparation for the monetary losses suffered by them as a consequence of the displacements caused by the abolishment.

SECOND. The same conclusion follows, if it be assumed that the abolishment was proper. Positions may be abolished, either when all of the work of the position disappears, or when the work of the position which remains is redistributed or assigned without violation of the Agreement (Awards 236, 1314, 3191, 5641 and 5664). If, as the Carrier contends, the Money Clerk position no longer existed, there was nothing upon which Rule 80 (Preservation of Rates) could operate; and the allowance of the higher rate to the Value

Clerks was, therefore, a change of rate of the Value Clerk position by reason of the combined duties assigned to it. This created a new position under Rule 15 which should have been bulletined under Rule 10. This conclusion is not altered by the fact that the Carrier waited until after the Value Clerk position was abolished before allowing the Value Clerk's claim. The allowance of the claim established what the proper rate of the position was when it was in existence; and the situation should be viewed as though what should have been done was done.

It follows from all of this that the particular course pursued by the Carrier in redistributing the work of the Money Clerk position after its abolishment was in derogation of Claimants' seniority rights under the Agreement. As a matter of fact, when the Carrier combined the duties and responsibilities of the Money Clerk and Value Clerk positions and then paid the Value Clerk position the rate of pay of the Money Clerk position, this was in substance and reality an abolishment of the Value Clerk position from which of course none of these displacements would have ensued.

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 Agreement was violated as above found.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. Ivan Tummon
Acting Secretary

Dated at Chicago, Illinois, this 4th day of March, 1932.