

Award No. 5776
Docket No. CL-5668

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Angus Munro, Referee

PARTIES TO DISPUTE:

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

THE COLORADO AND SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees:

(1) That the Carrier violated the rules of the current Working Agreement dated July 1, 1924, when on or about February 28, 1950, it abolished Typist-Clerk position rated at \$12.09 per day and concurrently therewith established Office Boy or Girl position rated at \$9.295 per day in Office of Freight Claim Agent, Denver, Colorado.

(2) That the Carrier restore the Agreement rate of \$12.09 per day for this position retroactive to the date position was unilaterally discontinued, i.e., February 28, 1950, and compensate Claimant, Miss Dorothy M. Westergren, and all other employees that may have been involved in or affected by this Agreement violation, for wage loss sustained from February 28, 1950, to date said Agreement violation is corrected.

EMPLOYEES' STATEMENT OF FACTS: The Claimant, Miss Westergren, was, prior to February 28, 1950, regularly assigned to position of Typist-Clerk, rate \$12.09 per day in Freight Claim Agent Matthews' Office at Denver, Colorado.

The normal duties assigned to her position as Clerk-Typist were:

Opening mail, stamping and sorting of same, requiring 1¼ hours service daily.

Attaching correspondence to file, requiring 3 hours service daily.

Handling correspondence in connection with sales tags and typing auction report requiring 1½ hours service daily.

Filing, requiring 1¼ hour service daily.

Register drafts, requiring ¼ hour service daily.

Shave cylinders for Ediphone machine, requiring ½ hour service daily.

TOTAL—8 hours daily. (Employees' Exhibit "A").

The rate of pay of \$9.295 per day for the Office Girl position was an agreed rate of pay for the work performed by that position and as the position is now doing relatively the same class of work formerly performed on that position prior to its abolishment on March 15, 1949, the rate should not be increased as claimed.

Your Board does not have the authority to require the Carrier to put on positions that are not required and neither does your Board have the right to require the Carrier to pay a clerical rate of pay to a non-clerical position, therefore, this claim should be declined.

The fact that on account of increase in freight claim work and changes in freight claim work, necessitating a readjustment of forces to take care of the increased and decreased business, should not require the Carrier to continue a rate of pay that was established for a clerical position to a non-clerical position when business returns to normal and work re-assigned to the normal forces before the increase or decrease made necessary a readjustment in forces.

It is not a violation of the Rule to abolish a low rated position and assign the work of that position to higher rated positions and then when business conditions justify, re-establish the position with the same duties and rates of pay that had previously existed.

It is not a violation of the Agreement to create a position with duties not to be construed as clerical duties and establish a rate for that position lower than a clerical position, provided such rates are in conformance with rates of positions of similar kind in compliance with Rule 55. This, however, is not the situation in this case. In this case an entirely new position was not created by an old position re-established with the same duties and same rates of pay that had previously existed and had been agreed upon. The Carrier contends that it did not violate the Agreement when it re-established a position with the same duties and rates of pay that had formerly existed and which rates of pay for the position were agreed upon.

We request that your Board decline this claim.

(Exhibits not reproduced).

OPINION OF BOARD: This claim is advanced by the System Committee of the Brotherhood, hereinafter called Petitioner, for and on behalf of one Westergren and such other employees more particularly referred to in part (2) of said claim, hereinafter called Claimants.

The claim is based upon an alleged violation of Schedule Rule 63. In Docket 5666, Award 5775, we discussed said rule at quite some length and reference is here made to such Award for all purposes. On or about February 28, 1950, Carrier abolished, at the location herein involved, a certain job styled typist-clerk. At about the same time it asked for bids on a newly created job styled office boy or girl. The new job was bid in by one DeTemple who, in turn, was bumped by the named Claimant. The defense of Carrier is set forth in Employees' Exhibit H wherein Carrier stated "we simply reinstated a position which was formerly in existence and the work now performed on that position is the same as was formerly performed."

We think our problem is to determine if the end result of the new job is essentially or substantially the same as when the old job was in existence even though the tasks are not identical. Employees' Exhibit A is a job description of the abolished job and we find no reasonable grounds upon which to dispute the same. Employees' Exhibit C is Carrier's bulletin for the new job. Comparing the time required to perform duties in common we find the same to be six (6) hours and fifteen (15) minutes. We think the time factor plus the basic characteristics of the new job fit the case within the Schedule rule.

With reference to that portion of part (2) of the claim reading "and all other employes that may have been involved" etc., the same is denied as being inordinate in that it is not supported by evidence.

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 Employes involved in this dispute are respectively Carrier and Employes 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 evidence of record warrants an affirmative Award with reference to the named Claimant in part (2) of claim herein and does not sustain an Award in favor of other Claimants mentioned therein.

AWARD

Carrier is hereby directed to restore the job first above mentioned and to pay to the named Claimant such wage loss as said Claimant may have incurred. In all other respects the claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Acting Secretary

Dated at Chicago, Illinois, this 21st day of May, 1952.