

Award No. 5965
Docket No. CL-5030

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

David R. Douglass, 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 (7c) per hour, and

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

OPINION OF BOARD: This is a resubmission of Docket CL-5030, which was remanded by Award No. 5162. The claim is now before us in order that we may determine if there was a position in the office of the Superintendent at Lorain, Ohio, similar in kind and class to the position of Stenographer-Clerk which was bulletined on March 25, 1948.

Rule 14 of the Agreement states that,

"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."

The Opinion in Award No. 5162 stated, in part:

"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 Stenographer-Clerk. The record is very indefinite 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 original case was not dismissed nor denied and the parties are properly before us at this time.

The record discloses that the Organization sought to conduct a joint check of certain positions. The Carrier chose not to participate in such a check. Such joint check was not made mandatory by Award No. 5162. The burden of proof in this instance falls upon the Organization and an assertion that the Agreement has been violated is not in itself enough to warrant a sustaining Award. We must look to the proof.

Award No. 5162 says, in effect, that it must be shown that there was a position of similar class or kind in the Superintendent's office. Said Award further states that the Superintendent's office at Lorain is a department within the meaning of Rule 14 and that the office of the Supervisor of Safety and Employment is a subordinate division and not a department. Thus we conclude that for the purpose of this case we are to consider the term "Superintendent's office" and Superintendent's department as being synonymous.

In order to arrive at a proper conclusion it becomes necessary that we examine the positions which were time checked by the employees. All were stenographic positions requiring proficiency in taking and transcribing shorthand. However, basic requirements do not necessarily mean that the positions are similar in kind or class. Other factors enter into determination of similarity of kind and class. Such factors may be special knowledge, degree of proficiency, duties and responsibility.

In the present case the evidence is not sufficient to establish such similarity as contemplated by Rule 14 of the Agreement and we must necessarily deny the claim.

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: (Sgd.) A. Ivan Tummon
Secretary

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