

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Livingston Smith, Referee

PARTIES TO DISPUTE:

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

SEABOARD AIR LINE RAILROAD 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 and continues to violate the Clerks' Agreement of August 1, 1945, and as amended and supplemented, when it abolished, effective at the close of business Friday, June 23, 1950, the position of Cashier in the office of the freight agent at Columbia, South Carolina, occupied by Clerk G. E. White.

(2) That Clerk G. E. White be restored to the Cashier's position as of June 23, 1950, and that he be compensated for all wage losses sustained by him at the regular rate of his position of \$14.12 per day (plus any subsequent general wage increases applicable to said position) less the amount of such straight time earnings as have accrued to him subsequent to June 23, 1950, on account of having to exercise his seniority on a lower rated position, from June 23, 1950 and subsequent thereto until this violation is corrected.

(3) That all wage losses sustained by other employees affected by this violation, plus any and all expenses incurred by said other employees and their families due to their being forced to move from Columbia, South Carolina, account of this violation, be paid for June 19, 1950, and subsequent thereto, until this violation is corrected.

EMPLOYEES' STATEMENT OF FACTS: In March, 1950, the Cashier's position was abolished and the work was turned over to the Chief Clerk and the Steno-Clerk to perform. The Cashier's duties had not decreased and the position was abolished in theory and not in fact. A grievance was filed on account of this abolishment and on June 19, 1950, the Cashier's position was restored, the incumbent at the time it was abolished was placed on it and paid the loss in salary account of being forced to exercise his seniority on a lower rated position during the period of abolishment. The Steno-Clerk was paid the difference between the rate of her position and the Cashier's position for the length of time that she had been required to perform the higher rated duties.

On June 21, 1950, Cashier G. E. White was notified by the Agent, Mr. K. E. Schachner that his position would again be abolished effective with the

distribute the work among other employees in conformity with the rules of the current agreement.

4. If Claimant White had possessed the fitness and ability to perform the duties of Steno-Cashier he could have bid in this position which carried rate of pay equal to that of Cashier.

5. Claimant has not subsequent to June 26, 1950 demonstrated to the Carrier that he possessed the fitness and ability to perform stenographic work.

6. All of the work coming under the scope of the Clerical Agreement was distributed to the clerks in the Columbia Freight Station Office and has been performed subsequently by them.

7. It is incumbent upon petitioners to show that the Carrier must maintain position in effect to suit the ability and fitness of a particular employee.

8. It is incumbent upon petitioners to show that the rules of the agreement prohibit the reduction of clerical force and rearranging the work among other clerks in the same office, same class and same seniority district in accordance with the current agreement.

9. The Organization claims that the position of Cashier should be restored. The Board does not have such authority. See Awards 1300, 3583, 3906, 4044, 5396, 5541.

10. All data herein has been discussed with petitioners' representative.

11. The facts in this dispute plainly show the claim is not supported by the rules of the agreement nor Third Division, N.R.A.B. awards, and the Carrier urges that it accordingly be denied in its entirety. (Exhibits not reproduced.)

OPINION OF THE BOARD: We are here concerned with the request of G. E. White that the position of Cashier be reestablished at Columbia, South Carolina, and that he, as the former occupant thereof, be returned thereto with pay for all wage loss sustained by him; that all employees displaced or affected by the action of the Respondent be returned to their former positions with reimbursement for all wage loss and expenses incurred.

The positions involved were abolished on June 23, 1950, and the newly established position created effective June 26, 1950. Prior to this action the position of Cashier (held by Claimant) carried a rate of \$14.14 per day and the position of Stenographer-Clerk (held by Mrs. R. H. Lewis) carried a rate of \$12.45 per day. The positions of Cashier and Stenographer-Clerk were abolished and the position of Stenographer-Cashier was established. Mrs. Lewis was the sole bidder on this newly created position which carried a wage rate of \$14.14 daily. Claimant G. E. White did not bid on the position of Stenographer-Cashier but in the exercise of seniority took the position of Warehouse Foreman, rate \$13.02 daily.

The Organization asserts that the Respondent's action resulted in the discontinuance of a (Cashier's) position which had been in existence for over 30 years, with the resulting effect or purpose of disqualifying the Claimant who was unable to do Stenographer's work, an integral part of the newly created position of Stenographer-Cashier, all of which was in contravention of Rules 6, 7, 32, 36 and 84.

Respondent contends that its action here was in the interest of economy and efficiency and for the sole purpose of making possible the performance of required Stenographer's work.

An employer retains, subject to the limitations of the collective bargaining agreement, all those functions generally considered and accepted as inherent prerogatives of Management. These ordinarily include distribution of the work load and direction of the working force. In Award 6187 this Board said:

"Carrier may, when in the interest of efficiency and economy, its operations so require, abolish positions and rearrange the work thereof unless it has limited its right to do so by the provisions of its collective agreements. However, when doing so, the work of the positions abolished must be assigned to and be performed by the employees entitled thereto"

Inasmuch as the work of the newly established position (Stenographer-Cashier) is to be performed by an employe covered by the Scope of the Agreement we must turn to the Limitations of the Agreement, if any, to determine the merits of Petitioner's claim. Rule 84 provides:

"Established positions shall not be discontinued and new ones created under a different title covering relatively the same class of work for the purpose of reducing the rate of pay or evading the application of these rules."

This rule in substance prohibits the abolishment of one position and the creation of another to perform relatively the same class of work for the purpose of "reducing the rate of pay" or "evading application of these rules". The record is conclusive that the wage rate for both the abolished position of Cashier and the newly established position of Stenographer-Cashier carry a daily rate of \$14.14, so, therefore, the Respondent's action was not in contravention of that portion of Rule 84.

Thus we come to that portion of the Rule reading, "Established positions shall not be discontinued for the purpose of evading the application of these rules".

Rule 6 is cited by the Organization as being one of the rules rendered meaningless by the Respondent's action. This rule in substance provides that while employees shall be entitled to promotion, the promotion will be based on seniority, fitness and ability, and such fitness and ability being sufficient, seniority shall prevail.

Thus we are confronted with the question of whether or not, within the prohibitions of the effective Agreement, the seniority of the Claimant was adversely affected. This Board, in Award 1314, in substance held that work attaches to, and is an attribute of a position, while seniority attaches to, and is an attribute of the person. The Respondent had the right to rearrange the work and determine the work load or job content of the position of Stenographer-Cashier and such content attached to the position.

Any use of the accrued seniority by this claimant to bid in and hold an otherwise available position was predicated upon the sufficiency of his fitness and ability.

Claimant here admittedly could not perform the Stenographer's duties which were attached to the position of Stenographer-Cashier.

We are of the opinion that the Respondent acted here in good faith and that its actions were not for the purpose of reducing the rate of compensation for a position or for the purpose of evading the rules of the Agreement.

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 evidence of record does not indicate any violation of 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 23rd day of July, 1953.