

Award No. 6410
Docket No. CL-6492

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Dudley E. Whiting, Referee

PARTIES TO DISPUTE:

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

ATLANTIC COAST LINE RAILROAD COMPANY

STATEMENT OF CLAIM: *Claim of the System Committee of the Brotherhood that:*

1. The Carrier violated the Clerks' Agreement, effective July 16, 1951, particularly Rules 55, 56 and 57 thereof, when at the close of business Friday, September 14, 1951, it discontinued position designated as "General Utility Calculator", rate \$14.46 per day, hours 8:30 A. M. to 1:00 P. M. and 2:00 P. M. to 5:30 P. M., Monday through Friday, occupied by Mr. N. R. Stanley in the Auditor of Freight Receipts Office at Wilmington, N. C., and concurrently therewith created a new position in that same office under the title of "Government Calculating Machine Operator, Desk 107," covering relatively the same class of work, at the same rate of pay, with the same hours of service and same assigned days per week.

2. Mr. N. R. Stanley shall be paid the sum of \$14.46 per day beginning with Monday, September 17, 1951, and for each work day thereafter up to and including October 8, 1951, at which time the violations complained of were corrected.

EMPLOYEES' STATEMENT OF FACTS: January 16, 1951, the Carrier created a new position designated "General Utility Calculator" in the Auditor of Freight Receipts Office at Wilmington, N. C., which was assigned to Mr. N. R. Stanley, January 26, 1951, as evidence by Carrier's Bulletin (Exhibit No. 2703) copy of which is attached as Employees' Exhibit No. 1.

Prior to September 14, 1951, the date the violation here complained of occurred, the position of "General Utility Calculator" had a full eight hours of work each work day, as follows:

1. Handled all daily reports for Inbound Rates and Division and Adjustment Bureau.
2. Prorated Government Cut Back Sheets (seven hours daily).
3. Prorated Commercial Correction Accounts on Recheck Job.
4. Made out monthly reports for Mr. N. M. Johnson, Assistant General Chief Clerk, also Averages—Prorating and Miscellaneous Reports for statistical reasons or purposes.

OPINION OF BOARD: This claim is based upon an alleged violation of Rule 77, which 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."

The principal contention being that the position of General Utility Calculator was discontinued and a new position titled Government Calculating Machine Operator, Desk 107, was created to evade the application of Rule 55, which provides:

"Employees will not be required to suspend work during regular hours to absorb overtime."

From the evidence submitted, it appears that the Carrier could have properly required the performance of overflow work from the Government Accounts position by the General Utility Calculator position so that no overtime work was necessary. Hence we cannot say that the purpose of the Carrier's action was to evade the application of the overtime rules. Upon this record it would appear that the purpose of such action was to avoid an argument with the employees about the propriety of assigning the work involved to the General Utility Calculator position. Thus it does not appear that the action taken violated Rule 77, so the claim is without merit.

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

The Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 18th day of November, 1953.