

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

LeRoy A. Bader, Referee

PARTIES TO DISPUTE:

**THE ORDER OF RAILROAD TELEGRAPHERS
ILLINOIS CENTRAL RAILROAD**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Illinois Central Railroad that:

1. The Carrier violated provisions of the prevailing agreement between the parties when on January 16, 1952, acting alone, it discontinued the positions of City Passenger and Ticket Agent, rate \$411.81 per month, and First Shift Operator Ticket Clerk, rate \$1.825 per hour, at Rockford, Ill., and concurrently therewith created position of Ticket Agent Operator, rate \$1.875 per hour to perform substantially the same work as that normally attached to the two abolished positions.
2. The Carrier shall be required by an appropriate order from the Board:
 - (a) To restore the position of City Treasurer and Ticket Agent at the rate of pay established therefor by agreement between the parties, namely, \$411.81 per month.
 - (b) To restore the position of First Shift Operator Ticket Clerk at the rate of pay established therefor by agreement between the parties, namely, \$1.825 per hour.
 - (c) To pay employees occupying the reclassified position since January 16, 1952, the difference between \$1.875 per hour improperly applied and \$411.81 per month, the rate specified in the agreement, and
 - (d) To compensate all other employees adversely affected as a result of the unilateral reclassification and change in rate of pay for their wage loss sustained retroactive to January 16, 1952.

(Note—The reparations due individual employees is not ascertainable until Carrier bulletins the vacancies and makes assignments as it should have done when the vacancy of City Passenger and Ticket Agent position occurred on January 16, 1952).

EMPLOYES' STATEMENT OF FACTS: An agreement bearing date of June 1, 1951, as to rates of pay and working conditions is in effect between the parties to this dispute.

appropriate for the reclassified position, and if the employees are dissatisfied therewith they may bring the dispute to this Board for adjudication."

All data in this submission have been presented to the Employees and made a part of the question in dispute.

(Exhibits not reproduced).

OPINION OF BOARD: Employees contend that Rule 5(d) of the Agreement is controlling in this dispute, which provides that changes in classification of positions or rates of pay shall be made only after conference and agreement between the Carrier and the Organization. Also cited in support of this position is Award 5171, where a substantially identical rule and similar facts were involved.

This is a joint submission and there is no material dispute as to the facts. On January 16, 1952, the incumbent of the City Passenger and Ticket Agent position retired and concurrently therewith, allegedly because of decreases of business and of almost complete disappearance of "City Passenger Agent" duties formerly designated as a part of the duties of the position, Carrier abolished the position and likewise that of first shift Operator Ticket Clerk. A new position of Ticket Agent Operator was established by bulletin, at rate of \$1.875 per hour. The claim is for the restoration of abolished positions at their former rates, for payment to incumbent, who previously held the first shift Operator Ticket Clerk position the difference between the rate established therefor, \$1.875 per hour and \$411.81 per month, and that all other employees adversely affected be compensated for any wage loss sustained by reason of Carrier's action.

Carrier cites Rule 5(b) as authority for the action taken which provides:

"5(b) When new positions are created, compensation shall be fixed in conformity with that of existing positions of similar work and responsibility in the same seniority district."

and further that the only portion of this claim properly before this Division for adjudication is that portion pertaining to the propriety of the rate of pay established by Carrier for the new position as the claim was handled on the property solely on that basis as shown by the record citing Section 3, First (i) of the Railway Labor Act and Award 5469 with other awards.

This contention of Carrier we do not believe has any merit owing to the fact that this is a joint submission and no proper showing has been made relative to any timely objection on jurisdictional grounds.

The Scope Rule includes "agents" (freight and ticket)." The exceptions Rule (2) includes "supervisory or traffic department agents."

The question is not raised in the record relative to this position coming within the exceptions rule, therefore, we assume no question of that nature is involved although there is some discussion in the record with reference to some supervisory duties being involved in the abolished position of "City Passenger and Ticket Agent".

The parties are apparently in agreement on the proposition that Carrier has the right to abolish positions if this prerogative is not limited by the Agreement. And in the record both parties are apparently in agreement on the proposition that in recent years the duties designated to the position of "City Passenger and Ticket Agent", i.e., those pertaining to "City Passenger Agent" have disappeared or have been absorbed by the employees occupying the three shift positions, Operator Ticket Clerks.

We are of the opinion that on this record Respondent Carrier was within its rights in abolishing the position of City Passenger Agent by reason of an almost complete disappearance of the duties originally pertaining to the position. As a matter of course the additional duties pertaining to the position of Ticket Agent remained. And had the Carrier abolished the City Passenger Agent position and stood on the record as presented herein, it was within the rights under the facts presented. However, Respondent Carrier did not stand on this proposition at that point but after an attempt, not considered sufficient under that rule involved, to adjust the matter by negotiation established a new position of Ticket Agent Operator fixing the rate of pay at \$1.875 per hour.

In so doing the provisions of Rule 5(d) come into being which provides:

"Positions, not employees, shall be rated. Change in classification of positions or rates of pay shall be made only after conference and agreement between the Carrier and the Organization."

We do not construe the evidence presented in this record with regard to "conference and agreement" as being sufficient to meet the provision on which to base any consideration that this rule has been invoked by Carrier with the result that Petitioners waived the provisions thereof.

It is noted in the wording of this rule the words used relate

". . . Change in classification or rates of pay . . ."

The abolishment of the City Passenger's position should be approved. The abolishment of the First Operator Clerk's position is not approved on the record of establishing the new position of Ticket Agent Operator and this portion of the claim should be remanded back for appropriate action on the property in accordance with the provisions of Rule 5(d). This position was not in fact abolished as the duties remained.

On the record it does not appear that other employees were adversely affected, or if such was the case it is not clearly shown to an extent to be intelligently passed upon.

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

1. That the Agreement was not violated on the abolishment of the City Passenger and Ticket Agent position. It was violated on the second position—that of First Shift Operator Ticket Clerk—and therefore this part of the claim is remanded for further consideration on the property in accordance with the provisions of Rule 5(d) of the Agreement.

2. (a) Denied.

(b) Remanded in accordance with Finding made under Division 1 hereof.

(c) Denied.

(d) Dismissed without prejudice by reason of lack of proof as to extent, if any, other employees were adversely affected.

AWARD

1. Denied in part and remanded in part as per Findings.
2. (a) Denied.
(b) Remanded as per Finding.
(c) Denied.
(d) Dismissed without prejudice by reason of lack of proof as to extent other employees were adversely affected.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 11th day of February, 1954.