

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

LeRoy A. Rader, Referee

PARTIES TO DISPUTE:

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

CHICAGO NORTH SHORE AND MILWAUKEE RAILWAY

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

(1) That Carrier violated provisions of its Agreement with the Brotherhood when, effective June 1, 1949, it unilaterally reduced the Agreement rate of \$258.00 per month to \$232.50 per month for position of Secretary, Director of Purchases and Stores at Highwood, Illinois.

(2) That Agreement rate of \$258.00 per month be restored and occupant(s) of the position be reimbursed for wage loss sustained, representing the difference between \$258.00 and \$232.50 per month, (plus interim wage increases negotiated and fixed by agreement) retroactive to June 1, 1949.

EMPLOYEES' STATEMENT OF FACTS: The rates of pay for employees of Carrier covered by the Scope Rule of our Agreement governing their hours of service and working conditions, effective April 1, 1945, were established by application of an Agreement dated Chicago, June 8, 1949. Involved in the instant case is position designated as Stenographer to the Director of Purchases and Stores, for which a rate of \$258.00 per month was fixed by this Agreement.

On March 24, 1949, Carrier's General Manager, Mr. Dwight L. Smith, notified us of Carrier's intent to move the offices of the Purchasing and Stores Department from Chicago to Highwood, about the 15th of April, 1949 (Employees' Exhibit No. 1).

As such a move involved the application of rules of our agreement with the Carrier effective since April 1, 1945, we so advised the Carrier in reply of March 29, 1949, to their letter of March 24, 1949 (Employees' Exhibit No. 2).

The subject matter was subsequently discussed and composed in conference on April 8, 1949, as set forth in our letter of that date to President Clinch (Employees' Exhibit No. 3).

Thereafter, some question arose as to the intent and purposes of the last paragraph of our letter of April 8, 1949, reading:

Knowledge of general office procedures and ability to handle related Purchasing and Stores Department duties, of a secretarial or clerical nature, as assigned."

Rule 61—(Rates of our current agreement reads as follows:

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

We contend that the carrier has violated this rule and hereby request that the successful applicant of C-162 be compensated the difference between \$258.00 and \$232.50 per month, a difference of \$25.50 per month.

An early and favorable reply will be appreciated.

Yours truly,

/s/ C. E. KIEF
General Chairman

cc: D. L. Smith, Gen'l. Mgr.

The appeal was denied by Mr. Clinch and now comes before this Board by virtue of Mr. Harrison's letter of February 4, 1954.

POSITION OF CARRIER: It is the position of the Carrier that with the moving of its Purchasing and Stores Department from Chicago to the Highwood, Illinois offices and the reorganization of that department with a reassignment of duties within the department, it had the right to abolish the Chicago positions and re-bulletin new positions in Highwood at an agreed rate consistent with the rate for positions at Highwood with comparable duties and that an agreement was reached with the Brotherhood acting through its General Chairman whereby after the Purchasing and Stores Department was settled in Highwood all positions would be reclassified with new duties and at new salaries based on comparable salaries in other departments in Highwood but that the personnel of the Purchasing and Stores Department in Chicago would retain the salaries they were then receiving in Chicago in the new positions they might take in Highwood.

It is the further position of the Carrier that it complied with its agreement when it refrained from abolishing position C-162 so long as Raymond Milke remained in the service of the Carrier regardless of any alteration in the location or duties of C-162 and that it did not violate that agreement or the Rules Agreement in finally abolishing C-162 after Milke's retirement from service and rebulletining the position as C-173 at a rate comparable to other Highwood salaries.

Any reasonable interpretation of the exchange of correspondence between the Carrier and the Brotherhood hereinbefore set forth could only lead to such conclusion.

WHEREFORE, the Carrier moves that the aforementioned claim be dismissed.

(Exhibits not reproduced).

OPINION OF BOARD: The claim results from Carrier's action in moving its Purchasing and Stores Department from Chicago to Highwood, Illinois, on April 16, 1949, and in so doing discontinued the rate of pay for the position of Secretary at \$258.00 per month and in lieu thereof establishing a position of Secretary-Clerk rated at \$232.50 per month.

Petitioners, in brief, contend there was a violation of Rule 61—Rates:

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

and state that Carrier's unilaterally rating of the new job with duties of the same kind or grade of work as the position formerly had was for the purpose of reducing the rate of pay, citing Awards 139, 1314, 3396 and 5197 in support of position taken as showing similar situations under rules of like content. Also cited are other awards, notably, Awards 5776, 5789, 5931 and 6832.

Respondent Carrier states its position by citing the contents of letters exchanged between officers of the parties as showing the intent of the move was to bring pay rates in line with Highwood rates of pay and on the theory that “incumbent rates are tied to individuals and not to positions * * *.” See letters in record and an interoffice communication by Carrier officials to the same effect.

Employee R. G. Milke held position C-162, Secretary, and he resigned the same on May 31, 1949, and it is contended the position was abolished on his resignation and the new position, C-173, created, designated as Secretary-Clerk, which position was awarded to Catherine Reynolds on June 15, 1949.

At the outset let it be said that the duties of these two positions are substantially the same. If there were any change, there might have been duties added. However, we view this as a moot question herein and not of great importance as the original position was general in its specification of duties, while the later position went into the subject in more detail. Suffice to say, general secretarial duties were involved.

It would seem that Carrier places too great an emphasis on the Agreement relative to the move from Chicago to Highwood, Illinois, on the proposition of its right to take unilateral action in setting up the new positions to the extent of fixing a new rate of pay. It is, however, contended that a difference in pay rates did exist as between the two, but such differences are not clearly shown in the record.

It will be noted in the General Chairman's letters it is stated that new rates established will be “as provided in our rules agreement.”

No question is raised relative to Carrier's right to abolish positions as the parties are in agreement that the position of Secretary was not abolished. It is our thought that on the action taken by Carrier there was no “meeting of the minds” as far as the intent of the Agreement is concerned. Apparently, Carrier assumed from the Agreement that it could proceed in the matter in which it did. However, in going over the communications exchanged, it is our thought that the General Chairman construed the same to the effect that there would be consultation and agreement on new rates of pay prior to the time the same were put into effect. We believe such was the intent of this Agreement and is the proper interpretation of the same. Therefore, this claim should be remanded and conference held relative to the proper rate on the position of Secretary-Clerk and in such conference a comprehensive consideration could be given to the proper differential in rates of pay as between Chicago and Highwood, Illinois, a matter on which we are unable to give proper treatment by reason of the record made here.

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

Claim remanded for further consideration in accordance with foregoing Opinion.

AWARD

Claim remanded as per Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 28th day of January, 1955.