

Award No. 6870

Docket No. CLX-6907

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Jay S. Parker, Referee

PARTIES TO DISPUTE:

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

RAILWAY EXPRESS AGENCY, INC.

STATEMENT OF CLAIM: Claim of the District Committee of the Brotherhood that:

(a) The Agreement governing hours of service and working conditions between Railway Express Agency, Inc. and the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, effective September 1, 1949 was violated at the Fresno, California Agency July 18, 1950 when Jane Keyes was required to perform higher rated duties of an allegedly abolished position titled Chief Clerk without being compensated at the rate of the work performed; and

(b) She shall now be paid the difference between what she was paid and what she should have received for all days she was required to perform the higher rated work retroactive to and including July 18, 1950.

EMPLOYES' STATEMENT OF FACTS: Jane Keyes with a seniority date of September 11, 1917 is the regular occupant of position titled Clerk-Stenographer, Group 32, Position 1, hours of assignment 8:00 A. M. to 5:00 P. M., days of rest Saturday and Sunday, salary \$261.00 basic per month. The duties assigned to the position as described by Bulletin No. 93 (corrected) dated April 19, 1945 (the latest bulletin advertising the position) are:

"Answer telephone, prepare statement and abstract, assist in preparation of reports, and perform stenographic work. Receipt for shipments over counter, delivery on hand shipments, write on hand notices and recap Forms 510 on Forms 509." (Exhibit "A")

Prior to July 18, 1950 (date of alleged abolishment) there was a classified position titled Chief Clerk, Group 11, Position 1, hours of assignment 8:00 A. M. to 5:00 P. M., days of rest Saturday and Sunday, salary \$302.42 basic per month. The duties assigned to the position as described by Bulletin No. 10 dated March 18, 1943 (the latest bulletin advertising the position) are:

"Assist General Agent in office details, make daily and monthly reports, as well as payrolls." (Exhibit "B")

the same or a different title for the purpose of reducing the rate of pay or avoiding the application of the rules. There was already in effect a position of Clerk-Stenographer, rated, bulletined and assigned, the duties of which contemplated the performance of purely clerical duties in the preparation of reports and statements which, while performed by the Chief Clerk were only incidental to his primary duties and responsibilities, and those lower rated duties took on no higher rated character when resumed by the Clerk-Stenographer on July 18, 1950, by reason of having been performed by the Chief Clerk. Employees' claim that Rule 80 was violated also falls of its own weight since there was no temporary or permanent assignment of the Clerk-Stenographer to a higher rated position. That in essence was the claim denied in Decision E-1386; namely, that the Clerk-Stenographer, a lower rated employee, had turned over to her work of the higher rated Chief Clerk. Referee Messmore found that while the claimant performed some duties of a similar kind and character as the classified position of Chief Clerk, those duties were fundamentally duties required of a Clerk-Stenographer.

Similarly, in Decision E-1516 Referee Lewis pointed out that while some of the higher rated duties performed by the Assistant Cashier were also performed by the Stenographer-Clerk, a large part of it was purely clerical, which did not invest the lower rated position with a higher rated character.

Employees have failed to support the claim in the instant case under the facts or rules, and a denial of the claim is in order.

All evidence and data set forth have been considered by the parties in correspondence and in conference.

(Exhibits not reproduced.)

OPINION OF BOARD: Up to July 18, 1950, two positions, both covered by the Agreement effective September 1, 1949, existed in the office of the Agency's General Agent at Fresno, California. One of these was a Chief Clerk position with a basic monthly rate of \$302.42, hours 8 A. M. to 5 P. M., Monday through Friday, rest days Saturday and Sunday. According to bulletins of record it was designed to "Assist General Agent in office details, make daily and monthly reports, as well as payrolls." The other was a Clerk-Stenographer position with a basic monthly rate of \$261.00. It had the same assigned hours and working days as the Chief Clerk position and was designed to "Answer telephone, prepare statement and abstract, assist in preparation of reports, and perform stenographic work. Receipt for shipments over counter, deliver on hand shipments, write on hand notices, and recap forms 510 on Form 509."

On July 18, 1950, the Agency discontinued the Chief Clerk position. The Brotherhood contends that since that date Jane Keyes, the occupant of the Clerk-Stenographer position, has been required to assume all the duties and responsibilities of such higher rated position without being compensated at its basic rate in violation of the following Rules of the Agreement:

"Rating—Rule 79. Positions (not employees) shall be rated, and the transfer of rates from one position to another shall not be permitted.

"Established Positions—Rule 79-A. Established positions shall not be discontinued and new ones created under the same or different titles covering relatively the same class of work which will have the effect of reducing the rate of pay or evading the application of these rules.

"Preservation of Rates—Rule 80. Employees temporarily or permanently assigned to higher rated positions shall receive the higher rates while occupying such positions; employees temporarily assigned to lower rated positions shall not have their rates reduced."

The Agency takes the position the work of the Chief Clerk position had decreased to the point where only incidental duties remained and that those

duties only, which were in the nature of routing Clerk-Stenographer duties, were all that were assigned to the involved Clerk-Stenographer position and hence were properly assigned thereto; and that actually what the Organization is here seeking to do is to gain a Chief Clerk's rate of pay for a routine Secretary, called a Clerk-Stenographer, under the guise of Agreement violation.

From what has been heretofore related it becomes apparent the primary issue involved in this case is factual and must be determined on the basis of the particular facts and circumstances involved in the dispute as presented.

Resort to the record discloses hopeless conflict between the parties with respect to their views regarding the kind, character and amount of work assigned to the involved Clerk-Stenographer at the time the Chief Clerk position was discontinued. Under such circumstances it goes without saying this Board cannot accept statements and conclusions made by the authors of the respective submissions as having probative weight but must search the record for the purpose of determining the facts established on the basis of evidence which is entitled to that force and effect.

Turning to the Organization's ex parte submission, it may be stated that instrument, by evidence of the character to which we have just referred, discloses:

1. That shortly after the inception of this dispute the Organization wrote the Agency's General Agent at Fresno, California, inquiring as to the status of the involved work and in response thereto received the following reply:

"In reference to your letter dated October 2, 1950 in regards to work now being performed which was formerly performed by the Chief Clerk which position was abolished.

"This work is now being done by Employee J. Keyes, specified as preparing forms, 3307, 3307-A daily production reports, 104 monthly production report, 11-16, Air Express monthly report, 933-A payrolls and 936 recapitulation of payrolls. Recapping each day time worked on Air Express, forms 913-914; also form 3306 daily accumulated detail record of daily and weekly revenue:

"In regards to the last paragraph of your letter stating that this work was being done by excepted employee. This work was being done by Depot Agent Mitchell to teach Employee Keyes the work. He has now discontinued any of this work only when necessary to coach Employee Keyes:

"Employee J. Keyes will perform this work at present or until changes are made."

2. An Exhibit, identified in the record as Exhibit "N," setting forth the duties of the Chief Clerk position prior to July 18, 1950; the duties of the Clerk-Stenographer position prior to that date; and the duties of the Clerk-Stenographer effective as of July 18, 1950, after the Chief Clerk position had been discontinued, disclosing that the major portion of the duties performed by the Chief Clerk position prior to July 18, 1950, were assigned to the Clerk-Stenographer, effective July 18th of that year.

3. An Exhibit in the form of a statement by P. L. Weaver, the occupant of the Chief Clerk position on the date of the discontinuance of that position, setting forth the duties performed by him which, when compared with the statement last above referred to, discloses that the major portion, if not all, of the duties listed by him in his statement were subsequently assigned to the Clerk-Stenographer.

4. An Exhibit signed by Jane Keyes present occupant of the involved Clerk-Stenographer position which, so far as pertinent to the point now under consideration, reads:

"I have never performed the work I am doing now, namely that of chief clerk, except when I was acting Chief Clerk after the death of Mr. Stone and Mr. Weaver was acting Agent, and other times when I relieved Mr. Weaver when he was on a vacation. All those times I received Chief Clerk's pay. I had never made out the B & E reports, daily, weekly and monthly until those duties had been added to my regular work since the abolishment of the Chief Clerk's position."

Further examination of the record discloses that the Agency for some reason did not see fit by evidence of probative value to refute or deny the foregoing evidence, adduced on behalf of the Organization, in any of its submissions. Therefore we are forced to give weight and credence to such evidence and must conclude that the Agency, notwithstanding its position to the contrary, assigned the major portion of the duties of the Chief Clerk position to the involved Clerk-Stenographer upon discontinuance of such position and required her to perform the higher rated duties of a Chief Clerk position at the rate of the lower rated Clerk-Stenographer position. This construction of the foregoing evidence, and for that matter a review of the other facts of record to which no specific reference has been made, impels a decision the action taken by the Agency in connection with the matter herein involved was in violation of the Rules of the Agreement on which the Organization relies and we so hold.

There remains the question whether, as urged by the Agency, the fact all of the duties of the Chief Clerk position were not assigned to the Clerk-Stenographer precludes the sustaining of the Claim. We are not inclined to labor the point. Assuming, as the Agency contends, some of the duties of that position were not so assigned does not lead to any such result. This Board has long been committed to the rule that it is not necessary for an employe to take over and perform all of the duties and responsibilities of a higher rated position in order to be entitled to pay at the higher rate.

Finally it should perhaps be stated that in reaching the conclusion just announced the Board has rejected, not overlooked, a contention advanced by the Agency, to the effect its action was warranted because all duties assigned to the Clerk-Stenographer after the discontinuance of the Chief Clerk position were duties which had been assigned to and performed by her position long prior to the time of the creation of the Chief Clerk position in 1943, for the reason the record does not sustain the factual premise on which such contention is based.

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 Employes involved in this dispute are respectively Carrier and Employes 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 Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 31st day of January, 1955.