

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

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

**THE NEW YORK, NEW HAVEN & HARTFORD
RAILROAD COMPANY**

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

(1) That the Carrier violated our Agreement effective Sept. 1, 1949, when, on May 8th, 1953, they abolished Position #603, to take effect on May 13, 1953, rated at \$14.136 per day, (all rates of pay mentioned in this claim include Escalator Clause and are of May 18th, 1953) and concurrently re-established Position #603 and rated it at \$13.058 per day to perform exactly the same duties formerly performed by the occupant of Position #603 when rated at \$14.136 per day.

(2) That the Carrier now be required to restore the original position #603, rated at \$14.136 per day and compensate the occupant or occupants of the position rated at \$13.058 per day for the difference in rates since assigned to this position.

EMPLOYEES' STATEMENT OF FACTS: The Auditor of Freight Receipts' Office on this property is made up of many Bureaus including the Interline Accounts Bureau, Interline Divisions Bureau, Overcharge Claim Bureau, Machine Bureau, Revision Bureau, Agent's Bureau, Stations Accounts Bureau, Review Bureau, Statement Bureau,—all these Bureaus are in the same seniority district. The Intransit Bureau for many years had one Comptometer Operator, rated at \$14.136 per day. Various others Bureaus, including the Agent's Bureau, Machine Bureau, Statement Bureau and Interline Accounts Bureau, include Comptometer Operator's positions at various rates of pay.

In the Intransit Bureau they had one Comptometer Operator identified as Position #603, rate \$14.136 per day, (EXHIBIT #1) and, although advertised as a combination clerical and comptometer position, Miss Nora Konold, the last occupant of the position, performed eight (8) hours of comptometer work and no clerical work. (SEE EXHIBIT #2.)

On October 2, 1950, this position was transferred from the Intransit Bureau to the Revision Bureau without rebulleting, because both Bureaus are in the same seniority district; further, there was no change in the kind or class of work as the occupant still performed eight (8) hours comptometer work.

"Coming now to the case at hand, as we understood it the dispute does not center around the cashier duties of the abolished job and which were not included in the created job but rather that said latter job covers relatively the same class of work or that Carrier's act is a method or means of evading the Schedule. Assuming the cashier feature of the abolished job required attention of but 1½ hours of the trick the question arises, is the holder of the new job by performing the remaining duties of the old plus the duties described in Employees' Exhibit 'B' thereby coming within the rule. The Carrier asserts at least five (5) hours of the new job are required for mail and janitor work which time together with time required for other warehouseman duties establishes that aside from cashier work very little, by reason of decrease of business, was left to be given to the new job. The fact the cashier part of the work was not transferred to a lower rated job is evidence of its relative importance and the fact the holder of the new job in addition to performing the long list of duties of a job which had been in being in the past could also do what was left of the abolished job demonstrates the new job did not meet the qualifications set out in Rule 63. The act of Carrier under the facts does not establish a design or purpose to evade."

Construing identical rules, this division denied a claim in Award 4494 because of reduction in rate of pay of the Secretary to the Superintendent Motive Power when a Chief Mechanical Officer was created to whom the superintendent reported. The opinion says:

"On the other hand, if the duties and responsibilities of a position are materially reduced, the Carrier may upon proof of that fact, justify a reduction of the rate of the position."

There is no contention that as an independent proposition, and divorced from the argument as to lapse of time since the change in duties, the advertised position here in dispute was not properly rated in accord with the rules. Its subsequent transfer on November 16, 1953, to the Interline Accounts Bureau was not involved in the claim as presented and handled on the property or as submitted here. It may be observed, however, that this transfer, all within the same seniority district, did not call for rebulleting, being specifically exempt under Rule 40(a), as was the original transfer from the Intransit to the Revision Bureau.

The position in issue was rated in accord with existing assignments doing identical work. There is absent any evidence of intent to evade the rules of the agreement or to reduce rates of pay. There was no bad faith, but rather a sound purpose to realign the rate in accord with changed duties in the bureau in which working. Rule 11 (supra, p. 5) was not violated. Accordingly the claim should be denied.

All of the facts and arguments used in this case have been affirmatively presented to Employees' representatives.

(Exhibits not reproduced)

OPINION OF BOARD: On May 13, 1953, Carrier abolished Position 603, rated at \$14.136 per day, and concurrently reestablished the position at \$13.048 per day. The Organization contends that this was in violation of the Agreement and that Carrier be required to compensate the occupant of Position 603 the difference in rates since May 8, 1953.

The Auditor of Freight Receipts Office is made up of many Bureaus, the only ones with which we are here concerned being the Intransit and Revision Bureaus. On October 2, 1953, Position 603 was transferred from the Intransit Bureau to the Revision Bureau with rebulleting. One Nora Konold was the occupant of Position 603 at that time and she continued to occupy

the position until May 13, 1953, when she bid in another position. She states positively that from October 2, 1950 until May 13, 1953, her full time was occupied in comptometer work, although the position has originally been bulletined as follows:

"Applicant must be a qualified comptometer operator and should have a general knowledge of the work in the Intransit Bureau. Duties include withdrawing waybills from file, balancing intransit accounts, investigating, handling and tracing open items and other similar work as assigned."

The record shows that all other than comptometer work had disappeared from this position long since (at least 2 years and 7 months). When Nora Konold bid in another position, Carrier abolished Position 603 and reestablished it with the following assigned duties:

"Applicant must be a qualified Comptometer Operator. Duties include verification of weight and charges shown on receiving waybills, corrections and changed cashier's checks, and other similar duties."

The Carrier states that although the clerical work other than the comptometer work had long since disappeared, the rate was not disturbed "out of fairness to the original incumbent who was still on this position." It was for this reason, so the Carrier states, that Position 603 was abolished and rebulletined with lower rated duties on May 15, 1953.

The Organization relies primarily on Rules 11, 60 and 64, current Agreement, which provide:

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

Rule 11.

"Positions (not employees) shall be rated and the transfer of rates from one position to another shall not be permitted except as provided in Rule 10."

Rule 60.

"The wages for new positions shall be in conformity with the wages for positions of similar kind or class in the seniority district where created."

Rule 64.

The record discloses that the occupant of Position 603 has been paid a rate of \$14.136 per day for four years or more. The evidence shows that for a period of 2 years 7 months the work of the position has been confined to comptometer work. The Carrier concedes that the work was such since January 1, 1951. We point out that the rate of \$14.136 per day was within the maximum and minimum rates for comptometer work in this office. The Carrier states that the pay was not reduced at the time the manual clerical work disappeared from the position for the reason that they did not desire to make the reduction until there was a change in the occupancy of the position. The Agreement provides, however, that positions and not employees are to be rated. Rule 60. It seems clear that the maintenance of the \$14.136 rate for such a long period of time must be construed as the establishment of the rate of the position for the duties there being performed. We do not want to be understood as saying that a Carrier may not reduce the rate of a position when important duties of the position disappear. But when such action is not done within a reasonable time after the disappearance of such duties, it will be presumed that the maintenance of the rate is accepted by both parties as the established rate of the position. A claim that a higher rate

was permitted to stand because of a desire to be fair to the occupant, amounts to a discrimination among employes, one of the things that collective agreements are intended to discourage. Any desire to be "fair" must therefore accrue to the position and not the individual employe.

There is no question that Position 603 was abolished and rebulletined as a new position without any change in duties. This is in violation of Rule 11. We think, therefore, that under all the circumstances shown that the Agreement was violated and a sustaining award is in order.

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 5th day of August, 1955.