

Award No. 7184
Docket No. CL-7157

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Livingston Smith, Referee

PARTIES TO DISPUTE:

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

**THE DENVER AND RIO GRANDE WESTERN RAILROAD
COMPANY**

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

(1) The Carrier violated the terms of the Clerks' Agreement as result of abolishing position of Roundhouse Clerk at Burnham, Colorado, on February 8, 1953, and creating in lieu thereof a position with title of "Stenographer-Clerk" in the Division Locomotive Foreman's office to perform the same work and duties of the former position of Roundhouse Clerk.

(2) The classification of "Stenographer-Clerk" unjustly restricts the operation of seniority among employes holding rights on Roster No. 26, Office of Master Mechanic, Pueblo Division, because there are a sufficient number of positions having stenographic work, dictation and transcribing in the Master Mechanic's office at Burnham to adequately protect such service.

(3) The employee assigned to position of Roundhouse Clerk, Mr. N. A. Jackson, and all other employes adversely affected, shall be reimbursed for wage loss suffered; the designation of "Stenographer" shall be removed from the position in the Division Locomotive Foreman's office and it shall be properly classified as "Clerk."

EMPLOYES' STATEMENT OF FACTS: On February 6, 1953, the position of Roundhouse Clerk was abolished and concurrent therewith a new position titled "Stenographer-Clerk" was established. Investigation developed that the duties performed by the newly created position were identical to the abolished position. The Carrier admits that between the date position was created and March 18, 1953, the incumbent performed no stenographic duties whatever; however, they contend that since March 18, 1953, he has been performing stenographic duties so as to warrant such classification, a contention which the Organization denies.

Bulletin No. 49 issued by Mr. J. E. Allen, Master Mechanic established position of Stenographer-Clerk in the office of Division Locomotive Foreman at Burnham at base rate of \$12.31 per day (Employes' Exhibit No. 1). On

failure to furnish the Carrier with dates, places and names of the employees in whose behalf the claim is made: the Carrier declares that the designation 'certain of its Coal Chute Foremen, Coal Chute Operators, Coal Chute Laborers, Pumpers, Crossing Watchmen, and Bridge Tenders' is too general, vague and indefinite. The Board finds that there is merit to this contention, in that the record is not, in fact, in such a condition as to make possible a proper analysis and determination of the issues involved in the claim; actually, the issues involved in the claim cannot be made out clearly from the record as it now stands.

In Award 2125 this Board stated that it should not attempt to decide claims of employees who were not before the Board and whose exact status was not known. Also, in Award 906, this Board said:

"The claim in this case should be restricted to the employees specifically named therein, since the correspondence shows that they were the only ones discussed in conference.'

The First Division of this Board, in Award 11642, said:

"* * * We do not propose to require the Carrier to search its records to develop claims for unidentified trainmen on unspecified dates. * * *"

Also see Third Division Awards 4305, 4117 and 1566, as well as First Division Awards 12345 and 11293."

The facts in this dispute show conclusively that claim is not supported by the rules of the current Clerks' Agreement nor Awards of your Honorable Board. It should be denied in its entirety.

All data in support of Carrier's position have been submitted to Organization and made a part of this particular question in dispute. The right to answer any data not previously submitted to Carrier by Organization is reserved by Carrier.

(Exhibits not reproduced.)

OPINION OF BOARD: It is here alleged that the Carrier improperly abolished the position of Roundhouse Clerk, establishing in its place and stead the position of Stenographer-Clerk, contrary to Rules 61 and 65, and adversely affecting Claimant N. A. Jackson, who occupied the abolished position of Roundhouse Clerk. Rules 61 and 65 read as follows:

RULE 61: "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 rates of pay or evading the application of these Rules."

RULE 65: "Proper classification of employees and a reasonable definition of the work to be done by each class shall be made, but shall not unduly impose uneconomical conditions upon the railroad."

The Organization takes the position that the duties of the position of Roundhouse Clerk had neither diminished nor disappeared and that the duties of the newly created position were comparable or identical with those of the abolished position. It was asserted that any work requiring a Stenographer (use of a typewriter for instance) could continue to be assigned, as in the past, to Stenographers in the Master Mechanic's office.

Respondent here points out that use of diesel locomotives required the creation of a stenographic position in the Locomotive Foreman's office, since the volume of stenographic work precluded the use, as in the past, of stenographers assigned to the Master Mechanic's office; and that the action here complained of resulted in neither a reduction of rate for the position nor an evasion of the application of the Rules cited.

It is unquestioned that a carrier has the right to determine the job content of a position as well as the qualifications required to fill a position. Likewise, within the limitations of the effective agreement, a carrier may change the method of performance of duties assigned to a position. The abolishment of the position of Roundhouse Clerk and the creation of the position of Stenographer-Clerk did not result in a reduction of pay.

The creation of the Stenographer-Clerk position merely had the effect of changing the method of performing certain duties but without the result of evading the application of the cited Rules. Likewise, there is no evidence of record indicating bad faith on the part of the respondent. (Awards 6091 and 6270).

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

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