

Award No. 7321
Docket No. CL-7513

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 ATCHISON, TOPEKA AND SANTA FE RAILWAY
COMPANY—*Eastern Lines*

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

(a) Carrier violated the rules of the Clerks' Agreement at Argentine, Kansas, when on January 7, 1952, it transferred the work of making Interchange Reports, Form 1305-C Special, from Position No. 433, rate \$14.60 per day, to positions hereinafter named paying a lesser rate; and,

(b) The occupants of Positions 241 and 244 and their relief shall now each be paid the difference between their present rate, \$14.02 per day, and the rate paid Position No. 433, \$14.60 per day, from January 7, 1952, for each day the violation occurs; and,

(c) The occupants of Position No. 243 and their relief shall now each be paid the difference between their present rate, \$14.33 per day, and the rate paid Position No. 433, \$14.60 per day, from January 7, 1952, for each day the violation occurs.

EMPLOYES' STATEMENT OF FACTS: As of the date the instant claim arose there existed, among others, in the Kansas City Terminal Seniority District the following positions:

Position No.	Assigned Hours	Rate of Pay
241	8:00 A. M.— 4:00 P. M.	\$14.02
243	4:00 P. M.—12:00 midnight	14.33
244	12:00 Mid.— 8:00 A. M.	14.02
433	8:00 A. M.— 4:45 P. M.	14.60
434	8:00 A. M.— 4:45 P. M.	14.60

Positions 241, 243 and 244 are located at the Argentine Yard in the Kansas City Terminal and are titled and rated as Yard Clerks and perform the normal, ordinary and regular duties of such positions, while Positions 433 and 434 were titled Car Clerk and located in the Freight Office in Kansas City proper. Position No. 433 was assigned to make Interchange Reports, Form

12. A showing of efficiency or economy is justification for a reduction in force by the Carrier when that force reduction does not violate the Agreement.

13. There is no assignment of "rates of pay" to "work" and that the "work" abolished was in no sense "work" demanding for its performance the payment of a "higher rate of pay."

14. The Board has no right to fix "rates of pay."

In conclusion the Carrier respectfully asserts that the claim of the Employees in the instant dispute is entirely without merit or support under the Agreement rules and should, for the reasons expressed herein be denied in its entirety.

All that is contained herein is either known or available to the Employees or their representatives.

(Exhibits not reproduced)

OPINION OF BOARD: The dispute in this case involves three Yard Clerks who work around-the-clock in Carrier's Eastbound Yard at Argentine, Kansas, and two Car Clerks assigned to the Kansas City, Missouri, offices of the Carrier. The Claimants are the three Yard Clerks who worked around-the-clock. One of their duties was to prepare Form 501 (4 copies) from a standard switch list. Prior to January 7, 1952, one copy went to the local freight office where the incumbent of Car Clerk Position No. 433 assembled them and prepared Form 1305-C Special (7 copies) for the car interchange bureau where, after correction, they were distributed to effectuate interchange operations. On January 7, 1952, the making of Form 501 was discontinued and the Claimants were required to prepare Form 1305-C Special (11 copies). The work of making corrections of Form 1305-C Special was assigned to Car Clerk Position No. 434, and Position No. 433 was abolished. The rate of pay for Position No. 433 was \$14.60 per day while the rates of the three Yard Clerks were \$14.02, \$14.33 and \$14.02, respectively. It is the contention of the Claimant Yard Clerks that they are entitled to the daily rate of \$14.60 since assuming the duties of Position No. 433.

The applicable rule is:

"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 rate of pay or evading the application of these rules." Art. XI, Section 5, current Agreement.

It is the contention of the Carrier that the discontinuance of Form 501 and the use of Claimants to prepare Form 1305-C Special was merely the elimination of work needlessly duplicated, and that it did not involve the performance of higher rated work by Claimants. It does appear that the making of these two form reports was quite similar in many respects. Form 501 was, however, a penciled report and intended as a cumulation of information from which Form 1305-C Special was prepared. With the discontinuance of Form 501 switch lists appear to have been used in lieu thereof. Claimants were required to type Form 1305-C Special in final form for distribution. The evidence is that the Car Clerk (433) took approximately six hours to perform this work. It is clear that this six hours work was assigned to the three Claimant Yard Clerks to perform. The fact that this work had been assigned to the higher rated Car Clerk Position No. 433 is evidence that it was considered by the Carrier to be higher rated work. We think the record shows that it was in fact higher rated work, it being the completed and final report for the use of the car interchange bureau.

It is fundamental that a carrier can abolish any position when the duties have ceased to exist. It may also rearrange its work in the interests of efficiency and economy as long as agreement provisions are complied with.

We think the rearrangement of the work in the present case was entirely proper, it being a managerial prerogative. The dispute, however, is whether or not the Agreement was violated with respect to its pay provisions. May these three Claimants be required to perform six hours of higher rated work at the lower rated pay of their positions? The answer to such questions is usually a difficult one. It is the province of management to add to or take away duties of a position. It necessarily follows that the assignment of a limited amount of higher rated work to a lower rated position does not constitute a violation of the Agreement, even though it affords a basis for negotiation. But when six hours work of a higher rated position is assigned to a lower rated group of employees, it is something more than a mere rearrangement of work among employees doing the same class of work. It is equivalent to the creation of new positions. We think the Agreement was violated under principles announced in the following awards: 751, 2785, 3557, 4688, 5478, 5789, 5931, 7058.

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

That the Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois this 4th day of May, 1956.

DISSENT TO AWARD NO. 7321, DOCKET NO. CL-7513

This Award is in error because the majority herein based its decision to sustain the claim on Article XI, Section 5 of the current Agreement, and upon the erroneous assumption that the making of the final report (Form 1305-C Special) by the abolished position must have been a more responsible duty than the preparation of Forms 501 by the Claimants, occupants of positions Nos. 241, 243 and 244.

The Opinion holds:

"* * * With the discontinuance of Form 501 switch lists appear to have been used in lieu thereof. * * *." (Emphasis supplied.)

The following positions were involved in the preparation of Forms 501 and 1305-C Special: Nos. 238, 240, 241, 242, 243, 244 and 433. Together with position No. 434, all were in the same seniority district and carried on the same roster.

Prior to January 7 and 11, 1952, the following situation existed: Inside Yard Clerk positions Nos. 241, 243 and 244 were seven-day positions, with two regularly assigned rest days per week filled by regularly assigned rest day relief employees. The three positions were assigned around-the-clock, and were located in an old box car body converted into an office, situated in Argentine Eastbound Yard. They had assigned duties of maintaining Forms

501 and keeping records of car movements through Argentine Yard, to and from connecting lines and within the Yard. Also employed in this Yard were three outside Yard Clerks (positions Nos. 238, 240 and 242), working around-the-clock, also seven-day positions, with two regularly assigned rest days each week filled by regularly assigned rest day relief clerks. These outside Yard Clerk positions had assigned duties of maintaining a track check of all cars in the Yard, incoming and outgoing trains, and to and from connecting railroads in interchange. This information was set out on a standard switch list form and delivered or telephoned to the occupants of positions Nos. 241, 243 and 244 for use in making Forms 501. Also, Walkie-Talkie radio device was used to transmit the information quickly to the inside Yard Clerks for preparation of Forms 501.

Car Clerk positions Nos. 433 and 434, located in the Freight Office, were seven-day positions, assigned hours 8:00 A.M. to 4:45 P.M., with two regularly assigned rest days filled by regularly assigned relief clerks.

In its Statement of Facts the Carrier sets forth in detail the manner in which the information necessary to complete Forms 501 (which consisted of 13 items to be filled in) was made available to the occupants of positions Nos. 241, 243 and 244. Upon completion of Forms 501, which were prepared by the inside Yard Clerks in pencil, with four copies made thereof, one copy was forwarded to the occupant of position No. 433, who consumed six hours per day in typing 10 items from Forms 501 to Form 1305-C Special, making seven copies thereof. The remaining two hours of each day the incumbent of position No. 433 assisted position No. 434 in interchange correction work.

Effective January 7, 1952, in order to eliminate the duplication of work involved in the preparation of Forms 501 and 1305-C Special, and also for the purpose of expediting the preparation of Form 1305-C Special, the following changes were made: The six Yard Clerks in the Argentine Eastbound Yard were moved into the Bill Office at Argentine. They are identified as follows: Positions Nos. 241, 243 and 244 (heretofore referred to as inside Yard Clerks) and positions Nos. 238, 240 and 242 (heretofore referred to as outside Yard Clerks). Effective at the close of work on January 11, 1952, Car Clerk position No. 433 (the incumbent of which had been preparing consolidated Form 1305-C Special from Forms 501 prepared by the Yards Clerks in Argentine Eastbound Yard) was abolished.

The only difference in the entire procedure is that, Car Clerk position No. 433 having been abolished, the incumbents of Yard Clerk positions Nos. 241, 243 and 244 (Claimants in this dispute), who moved into the Bill Office at Argentine, no longer prepare Forms 501 (its use being discontinued) but, in lieu thereof, prepare 11 copies of Form 1305-C Special. This simply eliminated a duplication of work.

No new positions were in fact established; the incumbents of inside Yard Clerk positions Nos. 241, 243 and 244 continue to perform the same duties they have always performed; they secure the same type of information from the same sources as heretofore, and simply use a different form calling for less information.

As this claim is sustained upon assumption, rather than upon a complete understanding of the facts, we dissent.

/s/ C. P. Dugan
/s/ R. M. Butler
/s/ W. H. Castle
/s/ J. E. Kemp
/s/ J. F. Mullen