

Award No. 7383
Docket No. CL-7222

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**

**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 rules of the Clerks' Agreement when the position of Secretary to Assistant Passenger Traffic Manager, base rate \$14.60 per day, was abolished and work assigned to this position was removed from the scope of the Agreement and turned over to those not covered, i. e., the Assistant to Passenger Traffic Manager and the General Passenger Agent; majority of balance of the duties of higher rated position of Secretary to Assistant Passenger Traffic Manager being assigned to newly created, lower rated position of Stenographer, base rate \$13.80 per day, and that

(2) Mr. James Arnett shall be paid one and one-half (1½) hours at time and one-half rate of \$14.60 per day for each day beginning May 1, 1953, and each subsequent work day thereafter until the condition complained of is corrected, account Assistant to Passenger Traffic Manager F. E. Long and General Passenger Agent B. E. Gregory being required or permitted to perform work which was part of the duties of Secretary to Assistant Passenger Traffic Manager, a fully covered contract position, and that

(3) Mr. James Arnett shall be paid the difference between rate of position of Stenographer, \$13.80 per day, and rate of the abolished position of Secretary to Assistant Passenger Traffic Manager, \$14.60 per day, for each day beginning May 1, 1953, and each subsequent work day thereafter until the condition complained of is corrected, by reason of the higher rated work and duties being assigned to a lower rated position.

EMPLOYEES' STATEMENT OF FACTS: On April 24, 1953, Carrier issued Bulletin No. 3 (Employes' Exhibit No. 1) abolishing the position of Secretary to Assistant Passenger Traffic Manager (base rate \$14.60 per day) effective at close of business April 30, 1953. On the same date Carrier issued Bulletin No. 4 (Employes' Exhibit No. 2) establishing position of Stenographer at base rate of \$13.80 per day, to be effective May 1, 1953. Mr.

Agent, the Carrier again wishes to state this item covers a most minor clerical function and involves checking on a sheet of ruled statement paper, date of receipt of reports from Carrier's Agencies.

Regarding the statement of the Employes above quoted that "Work on part of item 2, Keeping Timebook, as well as items 11 and 12 and 13 handling pass requests, half rate orders and territorial ticket reports is now being performed by your Chief Clerk, Mr. Davis, or by others under his supervision" the Carrier again wishes to state the position of Chief Clerk in the Passenger Department comes within the scope of the Clerks' Agreement. The occupant of this job, prior to the establishment of the position of Secretary to the Assistant Passenger Traffic Manager performed the work of keeping time, handling pass requests and half-rate orders. Having the Chief Clerk, a position coming within the scope of the Clerks' Agreement, handle territorial ticket reports and the other work mentioned is the prerogative of the Carrier and cannot be construed in any manner as a violation of the Clerks' Agreement.

With respect to Item 14, Handling Military Move Book, being handled by the Transportation Clerk, this position comes entirely within the provisions of the Clerks' Agreement. It carries a higher rate than that of stenographer and furthermore the position has always handled the detail work of all military movements.

The Carrier holds in the instant case there is no justification for the claim which involves not only the difference between \$13.80 per day and \$14.60 per day but in addition involves the payment of one and one-half (1½) hours at time and one-half rates of \$14.60 per day account Assistant to the Passenger Traffic Manager and the General Passenger Agent performing the work formerly performed by the Secretary to the Assistant Passenger Traffic Manager.

In addition to what the Carrier has quoted from Award 615, your Board in dealing with the principles involved in the instant case said in its Award No. 4559:

"This board has often said that there are few, if any, employees of a carrier, from the president on down, who do not perform some clerical work in connection with their regularly assigned duties; that the performance of such clerical work incident to a position by the occupant thereof who is not within the scope of the agreement is not in violation thereof; and that if the clerical work incident to a position increases and is assigned to a position under the Clerks' Agreement and performed by the occupant thereof, then, if it decreases, Carrier may abolish the position and return the remaining work to the position from whence it came and to which it is incident. That is, clerical work incident to a position outside of a Clerks' Agreement and then, if it decreases, back to the position to which it is incident. See Awards 806, 1405, 1418, 2138, 2334, 3211, 3735 and 3989 of this Division."

The Carrier asserts the claim should be denied. All data in support of Carrier's position has been submitted to the Employes and made a part of the particular question in dispute.

The right to answer any data not previously submitted to Carrier by Employes is reserved by Carrier.

(Exhibits not reproduced)

OPINION OF BOARD: This dispute arises under the Agreement effective June 1, 1941, and revised April 1, 1951. In brief the dispute comes into being by Carrier abolishing the official position of Assistant Passenger Traffic Manager effective May 1, 1953, and with it the position of Secretary to Assistant Passenger Traffic Manager. The Claimant held this last designated

position and with the abolishment of his position made application for the newly created position of Stenographer at a slightly lower rate of pay.

Claimant contends that the duties of his new position were practically the same as those of his abolished position and therefore that he is entitled to the same rate of pay he previously received. Cited in support of this contention is Rule 60, reading:

"Rule 60. 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."

Carrier supports its position in the change of positions by citing Rule 52 of the Agreement, reading:

"Rule 52. Wages for new positions shall be in conformity with the wages for positions of similar kind or class in the seniority district where created. If no similar position exists in the seniority district where created, rate shall be in conformity with positions of similar nature in adjoining seniority districts and shall be subject to negotiations."

In the record the duties of the two positions are considered at length and on behalf of the parties extensive argument is presented relative to the differences or the similarity of the duties performed. A review of these duties leads to the conclusion that they are relatively the same and that Carrier seeks to make a distinction where there is no material difference in the duties performed.

Therefore, it is our conclusion that the provisions of Rule 60 were violated in the action taken by Carrier. See Awards 6832, 7354 and others cited therein.

Claim (1) is sustained.

Claim (2) is sustained at the straight time rate.

Claim (3) is sustained.

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 Carrier violated the Agreement.

AWARD

Claims (1) and (3) sustained.

Claim (2) sustained in accordance with Opinion and Finding.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois this 20th day of July, 1956.

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

INTERPRETATION NO. 1 TO AWARD NO. 7383
DOCKET NO. CL-7222

NAME OF ORGANIZATION: Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes.

NAME OF CARRIER: The Denver and Rio Grande Western Railroad Company.

Upon application of the Organization involved in the above Award, this Division was requested to interpret the same by reason of an alleged dispute between the parties as to the meaning and application of Part 3 of the Claim as provided by Section 3, First, (m) of the Railway Labor Act, as amended.

This request of the Organization for an Interpretation of this Award is filed pursuant to Section 3, First, (m) of the Railway Labor Act, as amended, provides in part as follows:

"In case a dispute arises involving the interpretation of an award a Division of the Board upon request of either party shall interpret the award in the light of the dispute."

The request for an Interpretation alleges that Carrier in applying the Award in Part 3 of the same, contends that proper payment is the base rate of the position and that the rate which should have been paid was not the actual rate of pay at the time the dispute arose.

The contention of the Organization in our opinion is well founded and we assume that the rate of pay in question was the actual rate of pay for the position, which should be paid, and the position of the Organization is sustained in that respect.

Referee Le Roy A. Rader who sat with the Division as a Member thereof when Award 7383 was adopted, also participated with the Division in making this Interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 20th day of September, 1957.