

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

David Dolnick, Referee

PARTIES TO DISPUTE:

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

THE TEXAS AND PACIFIC RAILWAY COMPANY

STATEMENT OF CLAIM: (1) Carrier violated the Clerks' Agreement when on or about January 23, 1957, it abolished Position J-595, Correction Account Clerk, rate \$15.51 per day, and transferred the work of the position to local waybill filer, Position J-442, rate \$13.62 per day for performance by the occupant of that position.

(2) That Carrier be required to pay Mr. D. L. Grimmett, occupant of Position J-595, Correction Account Clerk, at the time of its abolishment on January 23, 1957, for every day he has been available for duty at the rate of \$15.51 per day, adjusted currently, until this matter is settled to the satisfaction of the Organization.

(3) That Carrier be required to pay occupants and their successors of Position J-442, Local Waybill Filer, \$15.51 per day: Mr. Charles Eudy for March 18 through April 12, 1957; Mr. Charles Bond for April 15 through April 30, 1957; Mrs. Jeanette White for May 28 through May 31, 1957 and John O. Schmohl for June 10, 1957 through June 21, 1957, who operate the Bruning Machine every day in connection with correction accounts until the proper rate for the work is put on the said position, which is \$15.51 per day, plus subsequent increases.

EMPLOYES' STATEMENT OF FACTS: (1) On or about January 23, 1957 position J-595, Correction Account Clerk, rate \$15.51 per day was abolished (See Employees' Exhibit No. 1) Among the duties of this position was the issuance of correction accounts on interline received abstracts to foreign roads. After the Division Clerk posted the corrected divisions on the abstract, the Correction Account Clerk made the correction account from the corrected abstract and made sufficient number of copies for all roads involved.

(2) A new procedure was adopted subsequent to the abolishment of the Correction Account Clerk Position J-595. The Division Clerk still posted the corrected divisions on the abstract, but the statement of difference was sent to the local waybill filer, Position J-442, to make the necessary copies to supply all roads involved, which he did by photograph made on the Bruning Machine. The rate of pay for the local waybill filer is \$13.62 per day, plus adjustments.

C. If there had been some violation of the agreement, there is no showing that any individual suffered any loss, nor, if so, which individual suffered how much loss, on what date or dates.

The Brotherhood's notion is that Mr. Hart, who could not satisfactorily perform, on clerical position J-595, the clerical work of preparing collection accounts, should collect the high rate of pay of that position every day, because two or three times a month he performs the non-clerical task of mechanically duplicating correction accounts which he could not have made. This is so unreasonable that it requires no discussion. The Brotherhood's notion is that the former occupant of abolished position J-595 had, and will have for the rest of his life, a monopoly on the work which is not even done any longer. This is so far removed from any contact with the law or the agreement or reality itself, that it is impossible to get close enough to it to discuss it.

The facts in this case have already been fully covered and correctly stated in our Statement of Facts. We refer the Board to the Statement of Facts and Exhibits, without further discussion.

For the reasons stated, the Carrier respectfully requests the Board to dismiss or deny these claims in all respects.

All known relevant argumentative facts and documentary evidence are included herein. All data in support of Carrier's position has been presented to the employees or duly authorized representatives thereof and made a part of the particular question in dispute.

(Exhibits not reproduced)

OPINION OF BOARD: On January 23, 1957, Carrier abolished the position of Correction Account Clerk—J-595 which then paid \$15.51 per day. The Correction Account Clerk "filled out a new document, called correction account, from the data" provided by Interline or Division Clerks who analyzed and checked differences, if any, reported by another railroad which took exception to the division of revenue on a shipment. "The Correction Account Clerk Assignment, known as J-595, did not require the knowledge and judgment that was required of a Division Clerk; but it required an understanding of the interline abstract and general purpose of the joint accounts bureau, and it required clerical ability" which was not required of position J-442—Waybill Filer.

Local waybills cover shipments for which the entire movement is over the line of this Carrier. Interline waybills cover shipments for which the movement involves two or more lines. Interline waybills require different processing from that required for local waybills. Local and Interline waybills are reported separately by destination agents, to facilitate the processing of them separately.

When position J-442—Waybill Filer was advertised as vacant on May 1, 1956, its duties were described as: "Filing waybills and other duties that may be assigned." Position J-442—Waybill Filer paid \$13.62 per day. Since September 1956, filing procedures were simplified and the work assignment was considerably reduced. To fill the work time of the job occupant, he was assigned other tasks, "such as messenger and mail delivery work, filing, and operation of duplicating machines.

A Correction Account Clerk, J-595, made carbon copies of the correction account prepared by the Division or Interline Clerks. On September 6, 1956,

the Carrier installed a Bruning Copyflex Machine which was used to duplicate Carrier data. The installation of this duplicating machine eliminated the copy work performed by the Correction Account Clerk. Since the clerks "on other jobs still check the bases for the division and compute the results, and determine, as they always did, whether the division of the revenues should be adjusted as claimed in the statement of differences. But they no longer send the papers and the completed data to a Correction Accounts Clerk to have a new document prepared . . . No new document is prepared." Photocopies of the original documents are made on the Bruning Copyflex Machine by a Waybill Clerk.

When Correction Account Clerk, Position J-595, was abolished on January 23, 1957, some of the clerical work necessary in making new correction accounts was assigned to other clerks on related positions at the same rate as that of J-595, or higher. Mostly they were made by the occupant of Interline Clerk positions J-465, at a higher rate. The Carrier has set out in great particularity the jobs and their daily rate (R 29). It shows that on January 23, 1957, when position J-595 was abolished, only position J-442—Waybill Filer paid a lesser daily rate. No new clerk work was transferred from position J-595 to J-442. Only the duplicating process formerly done by a Correction Account Clerk who made carbon copies is done by the Bruning Copyflex Machine sometimes operated by a Waybill Clerk.

The record is not clear whether higher rated clerks now do all of the duplicating work or whether all or part of it is still being done by the Waybill Filer, position J-442. On page 4 of the record the Organization says:

"On or about July 1, 1957, Carrier ceased requiring occupants of position J-442, Waybill Filer, to perform the work in question, and since that time it has been performed by occupants of position J-573, Claim Checker and Record Clerk, rate of pay \$15.51 per day, plus adjustments."

In the Carrier's Ex Parte Submission on page 31 of the record it says:

"Later, the Check Desk Clerks on Jobs J-389 and J-573, which were rated the same as the abolished job J-595 was rated when it was abolished, have resumed doing the majority of this duplicating of correction accounts, and only about one fourth of the duplication of correction accounts is being done by the occupant of J-442. Thus, at present and during recent months, only a total of about 1½ days of work per month on position J-442 is devoted to the duplicating of correction accounts, and that work is not done on that job every day."

Before considering the merits of this dispute, it is necessary to dispose of procedural and jurisdictional questions raised by both parties.

The Organization contends that the "Carrier failed to decline the claim within the time limit provisions of Article V of the August 21, 1954 Agreement." By letter dated May 31, 1957, the Organization initiated the claim. Carrier's representative declined the claim by letter dated August 1, 1957, or sixty-two (62) days after the presentation of the claim. Section 1(a) of Article V of the August 21, 1954 Agreement provides:

" . . . Should any such claim or grievance be disallowed, the Carrier shall, within 60 days from the date same is filed, notify whoever filed the claim or grievance (the employe or his representative) in writing of the reasons for such disallowance. If not so notified, the

claim or grievance shall be allowed as presented, but this shall not be considered as a precedent or waiver of the contentions of the Carrier as to other similar claims or grievances."

After receipt of Organization's letter of May 31, 1957, Carrier and Organization representatives met in conference on several occasions in an attempt to settle the claim. It is not clear what transpired in these conferences. There is sufficient evidence in the record to convince the Board that the Carrier had reasonable grounds to believe that pending these conferences and the probability of reaching a settlement of the dispute, the Organization waived the strict compliance of the 60 days rule in Section 1(a) of Article V.

Further, Carrier's letter of August 1, 1957, says:

"This is not a proper claim under Article 5 of the Agreement of August 24, 1954, nor was the alleged claim presented within 60 days of the occurrence on which the alleged claim is based."

If the Organization's claim was not filed within the time limit provided in Article V of the August 21, 1954 Agreement, then it does not matter whether the Carrier's declination was within the time limits. In Award 9684 (Elkouri) we held that since the claim was not properly filed in the first instance we did not need to consider whether the Carrier dis-allowed the claim within 60 days from the date it was filed. We must, therefore, consider whether the claim was filed in time.

Position J-595, Correction Account Clerk, was abolished on January 23, 1957. The claim was first presented to the Carrier by letter dated May 31, 1957, or about 128 days later. The Carrier contends that the Organization did not meet the time limits provided in Section 1(a) of Article V of the August 21, 1954 Agreement which, in part, reads:

"All claims or grievances must be presented in writing by or on behalf of the employees involved, to the officer of the Carrier authorized to receive same, within 60 days from the date of occurrence on which the claim or grievance is based . . ."

There is no disagreement on the date when the position was abolished, nor is there disagreement on the date when the claim was initially filed. The Organization contends, however, that this is a "continuing violation" of the agreement and is, therefore, not barred by the time limitations under Section 1(a) of Article V quoted above. Instead, it is valid under the provisions of Section 3 of Article V of the August 21, 1954 Agreement which says:

"3. A claim may be filed at any time for an alleged continuing violation of any agreement and all rights of the claimant or claimants involved thereby shall, under this rule, be fully protected by the filing of one claim or grievance based thereon as long as such alleged violation, if found to be such, continues. However, no monetary claim shall be allowed retroactively for more than 60 days prior to the filing thereof . . ."

The rate of pay for the abolished position J-595, Correction Account Clerk was \$15.51 per day. The rate of pay for position J-442 Waybill Filer was \$13.62 per day. The Organization's letter of May 31, 1957, in part, says:

"Claim is filed in behalf of the party or parties filling the position of waybill filer who operates the Bruning Machine every day in

connection with correction accounts from January 23, 1957 until the proper rate for this work is put on the position of waybill filer. The proper rate that should have been paid the waybill filer for doing the correction account work was the rate of pay paid the correction account clerk, \$15.51 per day, plus subsequent increases."

If the waybill filer was not paid the proper rate as claimed by the Organization, then the Carrier violated the Agreement each day the improper rate was paid. Under those conditions it is an "alleged continuing violation" of the Agreement under Section 3 of Article V of the August 21, 1954 Agreement and may be filed at any time. The only limitation is that the Claimant may recover retroactively only to 60 days prior to the filing of such claim. Whether or not the proper rate was paid is a question of fact which requires an examination of the merits.

The Carrier also contends that the claim is faulty because "it does not name any specific claimant." We have held in a long line of Awards that claimants need not necessarily be named. It is sufficient if they are readily identifiable. It is not the intent of the Railway Labor Act to be super technical. Its purpose is rather to expedite the settlement of disputes. See Awards 3256 (Carter), 5078 (Coffey), 5107 (Parker) 5630 (Wyckoff) and others. The Claimants here can be readily ascertained. The Carrier should have no difficulty identifying the Waybill Filer or Filers who allegedly were doing the work of the Correction Account Clerk. We must consider the dispute on the merits.

There is no question, and the parties agree, that the Carrier had the right to abolish position J-595, Correction Account Clerk. By so doing, did the Carrier transfer the duties to an employee paid at a lower rate and did such transfer of duties require the Carrier to pay the rate of the position abolished? Did the Carrier, as claimed by the Organization, "assign higher rated duties to lower-rated positions?"

The record shows that during "January and February of 1957, these copies of correction accounts were made by the clerks occupying Check Desk Clerk positions J-389 and J-593, both of which carried the same rate of pay as the abolished job of Correction Account Clerk." The Carrier then says that in March of 1957, the two Desk Clerks were busy and the duplicating work was assigned to Waybill Filer, C. L. Eudy, "who was not very busy" and who asked to do the duplicating work on the Verifax and Bruning machines, in order to fill out his time and learn how to use them. This was how the occupant of J-442 began making copies of correction accounts." When Mr. Eudy left that job on April 14, 1957, Mr. C. A. Bond who succeeded Mr. Eudy on position J-442 "also asked to use the photocopy machines and make these copies of correction accounts in order to fill out his time and familiarize himself with the use of the machines." From then on to about July 1, 1957, "practically all of the duplication of correction accounts was done by the occupants of J-442." Since July 1, 1957, Check Desk Clerks on jobs J-389 and J-573, which were rated the same as job J-595 was rated when it was abolished, have resumed doing the majority of this duplicating of correction accounts, and only about one fourth of the duplication of correction accounts is being done by the occupant of J-442.

This claim does not fall within the provisions of Rule 38 of the Agreement. An employee was not permanently or temporarily assigned to a higher rated position. Position J-595 was abolished. The Carrier, on occasion, transferred the duplicating work formerly done by a Correction Account Clerk (Position J-595) to a Waybill Filer (Position J-422).

The principal work of the Correction Account Clerk was of a general clerical nature which "required clerical ability." The copying of the correction account was incidental to such "clerical ability." The operation of the duplicating machine did not require such "clerical ability" previously performed by the Correction Account Clerk. Scope Rule 1 lists the operation of "mimeographing, and duplicating machines and machines of a like nature" in Group 2 while "clerical workers are listed in Group 1. The parties, apparently, recognized a differentiation of skills by thus listing them separately.

We have frequently held that the Carrier has the right "to add or take away duties of a position." See Awards 6395 (McMahon) and 7321 (Carter). Here, the Carrier abolished a position and transferred the clerical work to other clerks and, at times, transferred the duplicating work to a Waybill Filer. We hold that the Carrier had a right to do so and that it did not so "assign higher-rated duties to lower-rated positions." The higher rated duties were of clerical nature and not the operation of the duplicating machine.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 Carrier did not violate the Agreement.

AWARD

Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 7th day of May, 1962.