

Award No. 10746
Docket No. CL-10121

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION
(Supplemental)

Arthur Stark, Referee

PARTIES TO DISPUTE:

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

SOUTHERN RAILWAY COMPANY

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

(a) The Carrier violates the Agreement when, in the office of Supervisor Administrative Services, Washington, D. C., it bulletins vacant positions as "Stenographer" which are, in fact, "Typist" positions.

(b) The Carrier shall now be required to properly bulletin vacancies, showing proper title and actual preponderating duties.

EMPLOYEES' STATEMENT OF FACTS: The duties of the positions here in dispute consist of typing bills, vouchers, Accounting Department Forms and statements, journal entries and similar documents. The occupants of the positions were employed and/or promoted by the Carrier in the full knowledge that they were not qualified Stenographers. When vacancies occur, however, the Carrier denies promotion to the senior employe having qualifications comparable to those of the last occupant of the vacant position, i.e., Typist, and insists upon awarding the vacant position to an employe having stenographic qualifications. Once so assigned, the junior employe so assigned is required only to perform the regularly assigned duties of "Typist".

Claim or request that bulletins advertising vacancies in the office of Supervisor Administrative Services show the correct title of "Typist" and the actual preponderating duties of the vacant position was filed under date of December 10, 1956. Claim being declined, was appealed through the usual channels up to the Assistant Director of Labor Relations, Carrier's highest officer designated for that purpose. Conference was held on November 14, 1957, the Carrier declining the claim. Copies of all correspondence in con-

hand skills necessary to meet the requirements of a stenographer within the terms of their job descriptions.

In the handling of this dispute on the property, it has been carrier's position from its inception that the parties could not reclassify any of the stenographer positions in the bureau to that of typist without adversely affecting some of the present occupants. If the positions were divided into two classifications, some as stenographers and others as typists, the stenographer positions would of necessity carry higher rates of pay than those of typist. It will be seen from carrier's statement of facts that the present payroll rates of the stenographer positions range from \$19.10 to \$17.59 per day, effective as of November 1, 1957, the average rate being \$18.34 per day. Some of the present occupants, who are not qualified as stenographers, are assigned to higher-rated positions, while others occupy lower-rated positions. This matter was fully discussed and considered by the parties in conference, and it was recognized by all concerned that a reclassification, as between higher-rated stenographers and lower-rated typists, could not be feasibly made without adversely affecting some of the occupants on their existing assignments.

Carrier is not agreeable to reclassifying any of the positions in question to "typist" without a corresponding adjustment in the rate of pay, for the reason that these are established positions, classified and rated as stenographer, and all vacancies in such positions have been so bulletined. Moreover, all employees in the bureau who are qualified stenographers take and transcribe dictation as a part of the preponderating duties of their assignments. Therefore, as vacancies occur in any of these positions, it is perfectly plain that the carrier is not violating the agreement in assigning an employee who is qualified to perform the preponderating duties listed in the bulletin.

It has been shown that the procedure adopted in the fall of 1956 for correcting the conditions in the bureau does not disturb any of the present occupants on their regular assignments. Shortly after the procedure was established, a vacancy occurred in one of the middle-rated positions. The vacancy was filled by the assignment of a qualified stenographer. Because of the range of rates, the typists complained that they should have been moved up, based solely on their seniority in the bureau, and that the bottom-rated position be filled by the employment of a qualified stenographer. It is obvious that such a procedure would place typists on the higher-rated positions and qualified stenographers on the lower-rated positions, and the problem would remain unsolved. The rate range does not alter the fact that the typists were already being compensated as stenographers. However, this formed no basis whatsoever for assigning them, after the change in procedure, to vacancies in the higher-rated positions unless they meet the stenographic requirements as stipulated in the preponderating duties.

For the reasons set forth above, the claim should be denied in its entirety and carrier respectfully requests that the Board so decide.

All evidence submitted in support of carrier's position is known to the employee representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: In November 1956, when this issue arose, there were fourteen Group 1 clerical employees on the stenographic bureau of the

Accounting Department, office of Supervisor Administrative Services, Washington, D.C. Eleven of these employees occupied Stenographer or Stenographer-typist positions. Their daily wage rates (five different rates in actuality) ranged between \$16.39 and \$17.90 (in November 1957 the range was \$17.59 to \$19.10).

Since Fall 1956, if a vacancy arose in one of these positions, it was bulletined with "preponderating duties" listed as follows:

"Taking dictation from Officials and Clerks and transcribing notes on assignment from the Stenographic Bureau. Shorthand speed 80-100 words per minute. Typing letters, bills, vouchers, forms, multilith masters, journal entries, statements and other related work as may be assigned. Typing speed of 50 words per minute minimum."

On December 10, 1956 Petitioner's Local Chairman asked the Carrier to post future vacancies as Typist rather than Stenographer or Stenographer-Typist positions, and to specify "the preponderating duties of typing bills, vouchers, forms, journal entries, statements, etc., except as to the very limited number of positions where stenographic work can be provided." In denying this request, on January 2, 1957, the Carrier's Supervisor of Administrative Services noted in part:

"In the past stenographic work has not been in great volume. This has been due primarily to the fact that qualified stenographers were not available. We are correcting this condition as rapidly as possible by developing a force of qualified stenographers available to take dictation when required. It is also important that the positions in the Bureau be filled by employees having stenographic ability so they will be trained and available for promotion to positions in other offices."

This dispute is based on an unusual set of circumstances which may be summarized as follows: (1) The Stenographic Bureau has constituted a separate seniority district since the first Clerks' Agreement became effective in 1938; (2) No Typist positions have ever been established in this Bureau; (3) Stenographer positions, though renumerated at different rates, have all been bulletined and described in an identical manner; (4) Many vacancies in these positions have occurred, largely due to employees bidding on jobs in other departments or seniority districts; (5) During and since World War II the Carrier often was unable to find persons qualified in stenography to fill these vacancies; (6) Rather than let the positions remain unfilled, Management placed typists in the jobs without, however, changing either the job description or the attached rate of pay; (7) By Fall 1956 a minority (five out of eleven) of Stenographer positions were occupied by employees who could actually take dictation; (8) In 1956 Management determined (a) more employees with stenographic ability were required in the Bureau, and (b) it was possible to recruit persons with this skill. Accordingly, it decided to fill all **future** vacancies with such persons.

The nub of Petitioner's claim is that vacated positions whose last incumbent was a typist (with no stenographic skills) are, in reality, Typist positions. Therefore, Petitioner argues, they should be bulletined as Typist jobs, described as such (and, presumably, filled by the senior qualified applicant who will not be required to possess stenographic skills).

Significantly, however, we are dealing here with bulletining of positions **to be filled**. It may well be that an error was committed in the **past** when Stenographer positions were filled by non-stenographers (although, evidently, no protest was made then and the Carrier continued to pay higher Stenographer rates). Perhaps in the 1940's and early 1950's Management should have bulletined Typist, not Stenographer positions. But it did not—and no one was hurt. But now the Carrier asserts it needs persons who can take dictation. There is no evidence that this assertion is fallacious or frivolous or designed to discriminate against incumbents of Stenographer positions who have not acquired stenographic skills. (Such persons will remain in their jobs, continue to receive Stenographer pay, but will not be able to fill vacancies or be promoted to positions in which stenography is **actually** required.)

In other words, in view of the unusual factual history of this problem, the fact that for several years the Carrier, in effect, has waived stenographic requirements in certain positions, is not, in and of itself, convincing evidence that it does not need such services now or in the future. Since positions are bulletined for current and future performance, the claim cannot be sustained.

One final note: Petitioner argues that since Rule 16 requires only "preponderating duties" to be shown in a bulletin, and since stenography is not a significant component of the positions in question, Management has misapplied the Rule and should revise future bulletins.

True, Webster's Dictionary defines "preponderate" as "to exceed in weight; hence to turn the scale; to incline or descend, as the scale of a balance; to prevail, predominate; to outweigh, overbalance." It might be said with some reason, therefore, that only the predominant job duties should be listed in a bulletin. However, it does not necessarily follow that the exclusive standard for determining predominance is time spent at a given task. It would be unrealistic, in our judgment, to omit duties which require specific skills, for example, and it is extremely doubtful that the parties had any such intention in mind, even assuming use of such skill would be required only a brief time.

Rule 16, it should be noted, also states, in part, "... The senior **qualified** employee shall be assigned to the position . . ." (emphasis added). Since qualifications are crucial, what purpose would be served by omitting stenographic qualifications from a bulletin describing a position where that skill is necessary? Employees denied promotions would be the first to complain that Management had no right to bypass them because they did not possess skills which Management had failed to mention in its bulletin.

Under all these circumstances, then, this claim must be denied.

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 not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 3rd day of August 1962.