

Award No. 11619
Docket No. CL-11011

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

William H. Coburn, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES
CHICAGO AND ILLINOIS MIDLAND RAILWAY COMPANY**

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

1. The Carrier violated and continues to violate the current Clerks' Agreement effective February 1, 1938, revised and reprinted April 1, 1953, when it unilaterally transferred a portion of Car Accounting work to the I.B.M. Bureau of the Accounting Department effective November 4, 1957.

2. That M. B. Ott and her successor or successors, if any, be compensated at the rate of the No. 1 Car Record Clerk position less compensation received, beginning November 4, 1957, until claim is satisfied.

3. That J. W. Stender and his successor or successors, if any, be compensated at the rate of the No. 1 Car Record Clerk position less compensation received, beginning November 11, 1957, until claim is satisfied.

4. That B. L. Cross and her successor or successors, if any, be compensated at the rate of the No. 1 Car Record Clerk position less compensation received, beginning November 4, 1957, until claim is satisfied.

5. That the positions of Assistant Machine Operator, No. 1 Key Punch Operator and No. 2 Key Punch Operator be bulletined and Comptometer Operator/Key Punch Operator position be bulletined as Key Punch Operator.

NOTE: Reparation due employees to be determined by joint check of Carrier's payrolls and such other records that may be deemed necessary.

EMPLOYEES' STATEMENT OF FACTS: The Carrier in 1956 began preparations for transferring Car Accounting records to the Accounting De-

AWARD 16615 (First Division)

"There is no evidence of proper handling of the revised claim as required by Section 3, First (i) of the Railway Labor Act prior to its submission here. The claim contained in the submission is therefore dismissed without prejudice to the position of either party."

AWARD 18453 (First Division)

"The Division, after a study of this record, concludes that the claim presented here is not the same as the claim considered on the property. Hence, this claim will be dismissed without prejudice."

Other awards are: First Division 16902, 16906, 16979, 17296 and 17306.

CONCLUSION

The Brotherhood has not been able to show a single rules violation. Therefore, the instant claim can only be viewed as a general protest of the carrier's proper utilization of long established accounting procedures, positions and equipment. There has been no change in the description of any position, no change in the rate of any position, none of the claimants' positions have been abolished, not a single claimant has been temporarily or permanently assigned to a higher rated existing position and no position has been reclassified. The basic rates of pay have not been changed by mutual agreement between the parties and no employee performed additional work without compensation. There has been no change in working conditions, and no seniority or other contract rights have been denied any of the claimants. There is no basis whatsoever under the agreement for a claim or grievance.

Such requests for increases in rates of established positions and re-bulletining thereof is a matter of negotiation. Having failed to gain the extent of their desires under the lawful procedures of the Railway Labor Act and having agreed to abstain from disturbing the existing general level of compensation until November 1, 1959, the Brotherhood here seeks to improperly progress a protest and a request with wishful thinking that your Board will grant them the pay adjustments which they were unable to obtain across the bargaining table.

The past practice of over 30 years, both before and after the effective date of the collective bargaining agreement, recognizes the agreed-to use of machines for the performance of work (without rate adjustments and/or re-bulletining) and certainly proves that there is no provision in the rules agreement which provides for the penalty here sought or requires the carrier to upset the entire salary structure and bulletin procedures of Roster No. 1 positions when the volume of work increases and/or decreases on any such position or positions.

A denial award is respectfully requested.

All data in support of the carrier's position in connection with claims has been presented to the duly authorized representative of the employees and is made a part of the particular question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: This is a dispute where the claim stands or falls on a question of fact: When the higher-rated position was abolished and

the work transferred to another department were Claimants, occupying lower-rated positions, thereafter required to perform that work?

Effective November 4, 1957, this Carrier converted its manual car accounting work to the I.B.M. process. Certain clerical positions in the Car Service Office were abolished as a result. This claim was filed on the premise that Claimants, Key Punch Operators in the I.B.M. office, were thereafter required to perform a portion of the work that had theretofore been done manually by the No. 1 Car Record Clerk, whose position carried a daily rate of \$17.77.

Claim is based primarily on Rule 56 of the Agreement, which, in pertinent part, reads as follows:

"Employees . . . permanently assigned to higher-rated positions shall receive the higher rates while occupying such positions; . . ."

A description of the work performed by the No. 1 Car Record Clerk is of record and reads as follows:

"Check in interchange reports; date stamp interchange reports and line up in road and station order; work foreign car record; give home routes; take telephone calls giving records and movement of cars; trace for open and short car record; check per diem extensions in foreign car records; work conductors letters, work interchange corrections and supplements; check car repair cards as to movement of cars; transfer foreign and private cars on line first of each month; work position of Utility Clerk when regular clerk not available; take count of foreign cars on line first and fifteenth of each month; and other clerical duties pertaining to car record work that may be assigned."

The record is devoid of evidence of probative value that Claimants performed any of the foregoing duties. It is shown, however, that their work load as Key Punch Operators was increased due to the transfer of the car accounting procedures to the I.B.M. bureau. This fact, without more, is insufficient to substantiate the allegation that there was such a substantial change in the character and functions of the Key Punch Operators' jobs that new positions were created or that an increase in the rate paid Key Punch Operators was thereby justified. (See Awards 1315, 7083 and 8158.)

In the light of the foregoing considerations, the Board cannot find that the Agreement was violated. The claim, therefore, will be denied.

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 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 19th day of July 1963.