

Award No. 12225
Docket No. CL-11818

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David Dolnick, Referee

PARTIES TO DISPUTE:

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

**SOUTHERN PACIFIC COMPANY
(Pacific Lines)**

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

(a) Carrier violated the Clerks' Agreement between the parties effective October 1, 1940, as amended, when it transferred the work of making copies of freight bills and waybills by Verifax Copier Machine from position of Waybill Clerk to Record Filer Position No. 50 without making appropriate rate adjustment; and,

(b) Carrier shall now be required to compensate Virginia Hermes, incumbent of Record Filer Position No. 50, her substitutes and/or successors, if any, for the difference between Record Filer's rate of pay, \$14.72 per day, and Waybill Clerk's rate, \$16.99 per day, October 17, 1957, and each date thereafter that they are required to operate the Verifax Copier Machine making copies of freight bills and waybills while occupying Position No. 50 and paid at the rate thereof.

EMPLOYES' STATEMENT OF FACTS: There is an Agreement bearing effective date October 1, 1940, reprinted May 2, 1955, including revisions, between the Southern Pacific Company (Pacific Lines), hereinafter referred to as the "Carrier", and its employees represented by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, hereinafter referred to as the "Employees", which Agreement, hereinafter referred to as the "Agreement", is on file with this Board and by reference thereto is hereby made a part of this dispute.

1. Pursuant to negotiations culminating in United States Labor Board Decision No. 1986, the following positions covered by the Agreement and here involved were in existence at Carrier's Sacramento Freight Station as of October 16, 1923:

Payroll Classification	Adjusted Rate
Waybill Clerk (Head)	\$5.82
Waybill Clerk	5.10
Waybill Clerk	4.82
Waybill Clerk	4.62

the maintenance of rates provisions of this rule have application only to a "temporary assignment" to a lower-rated position. The rule has no application where, as here, the higher-rated position is abolished and the employee reverts permanently to a different lower-rated position. Further, it is apparent that in the circumstances of the within claim the claimant did not "occupy" the higher-rated position of Waybill Clerk to the extent of fulfilling the duties and responsibilities of the position (as the rule requires) at any time when she was regularly assigned to Record Filer Position No. 50. The only thing that claimant ever did (and all that petitioner has ever contended as a basis for the claim) was to operate the Verifax Copier for a minor portion of her workday—a duty sometimes also performed by the Waybill clerk position and, as carrier shall show, by every other position in the department.

This results in the conclusion that the rules relied on by the petitioner in handling this claim with the carrier do not support the position for which it contends.

It is the affirmative position of the carrier that the operation of the Verifax Copier is not a part of the recognized duties of any specific position; rather, the character of the work is such that it properly can be and is performed by an employee on any position without regard to the rate of pay involved. In this connection, the attention of the Board is directed to Carrier's Exhibit C, a tabulation showing the location and kind of photo copiers employed in the carrier's service and the class of employee assigned at each location to the operation of such machines. It will be noted that at each location on the carrier, every employee at the location operates the copier as necessary from time to time. This tabulation, and the practice to which it testifies, indicates that at no location where such copiers are used is the operation of the copier regarded as the exclusive duty of any specific position; nor is the copier operated only by the higher-rated positions. In many instances where identical machines are in service, the operation is not specifically assigned to any position. Further, in instances where certain positions are assigned to the operation of the copier for a portion of their work day (at Phoenix and Los Angeles, for example) the position assigned is analogous in responsibility and rate to that of claimant (Records Binder Clerk; Sorter).

Finally, the attention of the Third Division is directed to its Award No. 2998. There the Board held, under agreement provisions similar to those involved herein, that the operation of a photostat machine considerably more complicated than the Verifax Copier did not require a special skill or training or merit a higher-rated classification, and that it was not a violation of the parties' agreement to assign the operation of such machine to a lower-rated position.

CONCLUSION

Carrier asserts it has conclusively established that the claim in this docket is entirely lacking in either merit or agreement support and therefore asks that it be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: Prior to October 4, 1957, Claimant was regularly assigned to Waybill Clerk Position No. 57 at Sacramento Freight Station. Her duties as a Waybill Clerk consisted of filling out shipping orders, routing shipments, determining applicable rates, making billing orders, issuing correction notices, transcribing and distributing various bills, notices and orders

in connection with the shipments of freight and making copies of waybills and freight bills. Sometime in March, 1957, Claimant began making copies of waybills and freight bills on a Verifax Copier Machine instead of on a billing machine or typewriter. The Waybill Clerk rate at the time was \$16.99 a day.

Carrier abolished Waybill Clerk Position No. 57 on October 4, 1957. Claimant exercised her seniority rights and on October 7, 1957, she became regularly assigned to Record Filer Position No. 50, at the Sacramento Freight Station. On or about that date Carrier transferred the work of making copies of waybills and freight bills on the Verifax Copier Machine to Claimant in her position as Record Filer. The Record Filer rate was \$14.72 a day.

The claim is for the difference between the Waybill Clerk's rate of \$16.99 a day and the Record Filer's rate of \$14.72 a day, for each day from October 17, 1957, and thereafter when employes occupying Record Filer Position No. 50 operated the Verifax Copier Machine.

Carrier contends (1) "that the operation of the Verifax Copier is not a part of the recognized duties of any specific position"; (2) "that no specific rate applies to the operation of this copier"; (3) that the operation of the machine requires no special skill or training; (4) that the operation of the machine is for only a minor part of the tour of duty of any employe; (5) that the operation of the machine is in no way part of the duties of a Waybill Clerk; (6) that there is no violation of any of the provisions of the Agreement.

The record shows that making copies of waybills and freight bills at Sacramento Freight Station has generally been done by Waybill Clerks and Freight Clerks. The rate of pay for each of the positions is the same. No employe at the Sacramento Freight Station, other than Claimant, regularly operated the Verifax Copier. Carrier admits that "the operation of the Verifax Copier did not consume in excess of an hour and 30 minutes of Claimant's usual work day as a waybill clerk." Carrier further admits that Claimant continued to spend about 1½ hours a day operating the Verifax Copier after she was regularly assigned to the position of Record Filer. Carrier's Exhibit C, attached to its Ex Parte Submission, in part, includes the following information.

"SACRAMENTO FREIGHT STATION"

Verifax Copier	Record Filer	1'3"
	Cashier's Clerk	As occasion requires
	Claims Clerk	As occasion requires
	Waybill Clerk	As occasion requires
	Freight Bill Clerk	As occasion requires
	Transit & Switching Clerk	As occasion requires"

Nowhere in the record does Carrier show how often and under what occasions the clerical employes at the Sacramento Freight Station, other than Claimant, operate the Verifax Copier. Perhaps, that is done when Claimant is absent from work, and then the employes who operate the machine continue to receive their regular rate of pay which, in every instance, is higher than Claimant's rate, and in no case less than the Waybill Clerk's rate. It may be true, as Carrier contends, that the operation of the Verifax Copier is assigned to higher as well as lower paid positions. This, presumably, is the purpose of Carrier's Exhibit C. But that Exhibit does not show the rates of pay for the

listed positions; in only seven of the twenty-one locations listed is the work of a duplicating machine operator assigned to an employee regularly for a part of a day. All other employees operate the machines only occasionally.

For our purpose, we may not consider the practice in locations which are in other seniority districts. We are concerned with the practice at the Sacramento Freight Station. There, the copying of waybills and freight bills had regularly been done by the Waybill Clerk and the Verifax Copier was operated by Claimant when she was assigned to Waybill Clerk Position No. 57. There is no evidence in the record that the employee who was assigned to the Record Filer Position No. 50 prior to Claimant had operated the Verifax Copier.

In a letter dated February 26, 1959, Carrier's Assistant Manager of Personnel wrote to Petitioner's General Chairman, in part, as follows:

"This case was discussed with you and Mr. Lavelle in conference on February 19, 1959.

As stated to you in conference, the claimant does not perform any duties meriting reclassification of to 'Waybill Clerk', nor adjusting rate of pay."

The fact that the operation of the Verifax Copier was assigned only to Claimant, and the fact that this work was only a part of the total duties formerly done by a Waybill Clerk does not justify the payment of the Record Filer's rate during the time that Claimant operated the Verifax Copier. We held in Award 4688 (M. Stone) that the transfer of three hours' work from an abolished position to a lower rated position is a violation of the Agreement. The fact that operating the Verifax Copier is rather simple does not give Carrier the right to transfer that operation from a higher to a lower rated position.

The record does not contain a copy of the Bulletin of Waybill Clerk Position No. 57. We are unable to learn whether copying of waybills and freight bills was included in the job description. We do know that the work was done by Claimant as a regular assigned duty when she was assigned to that position. We also know that she continued to perform that work as a regular assigned duty when she was regularly assigned to Record Filer Position No. 50. Part of the regular assigned duties of Waybill Clerk No. 57 was not abolished. Whether that part or the other duties determined the rate of pay for the Waybill Clerk we are unable to say from the evidence in the record. We are obliged to assume that the copying work, whether done on a billing machine or typewriter or by a Verifax Copier, was part of the required duties which determined that rate and we must also assume that whenever such work is done, the Waybill Clerk's rate or a higher rate should be paid. Carrier violated the meaning and intent of Rules 4, 5, 6 and 7 of the Agreement.

Claimant, her substitutes and successors to Record Filer Position No. 50 are entitled to recover the difference between the Waybill Clerk's rate and the Record Filer's rate only for those hours each day from October 17, 1957, when Claimant, her substitutes and successors made copies of waybills on a billing machine, on a typewriter, or on the Verifax Copier.

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 Employee involved in this dispute are respectively Carrier and Employee 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

Claim is sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 18th day of February 1964.

DISSENT TO AWARD 12225, DOCKET CL-11818

The award of the majority erroneously holds the Carrier to have violated Rules 4, 5, 6 and 7 of the Agreement when these rules were not even shown to have been applicable, much less violated.

Rule 4 reads:

"RULE 4. RATING POSITIONS

Positions (not employees) shall be rated and the transfer of rates from one position to another shall not be permitted."

This rule was clearly not violated since there is no question here raised that the employee, not the position, was rated. The very claim sustained violates the rule, since it transfers the rate of "Waybill Clerk" to another position, that of "Record Filer."

Rule 5 reads:

"RULE 5. NEW POSITIONS

The wages for new positions shall be in conformity with the wages for positions of similar kind or class in the seniority district where created."

This rule likewise was not violated, since the Claimant occupied an established position on which she had exercised her seniority. No new position was involved.

Rule 6 reads:

"RULE 6. RATES

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."

Here again the rule does not apply, since no new position was created.

Rule 7 reads:

"RULE 7. PRESERVATION OF RATES

Employee temporarily or permanently assigned to higher rated positions shall receive the higher rates while occupying such positions;

employees temporarily assigned to lower rated positions shall not have their rates reduced.

A 'temporary assignment' contemplates the fulfillment of the duties and responsibilities of the position during the time occupied, whether the regular occupant of the position is absent or whether the temporary assignee does the work irrespective of the presence of the regular employe. Assisting a higher rated employe due to a temporary increase in the volume of work does not constitute a temporary assignment."

Here also there is no violation, since the Claimant was not temporarily, but permanently, assigned to a lower-rated position.

Further error follows in this award where reference is made to the fact that in only seven of twenty-one locations on the Carrier's property is the work of operating the duplicating machine assigned to an employe regularly for part of a day. After having made this observation with regard to the situation systemwide, the award then correctly recites " * * * we may not consider the practice in locations which are in other seniority districts."

Award 4688 (M. Stone), is cited and relied on in this case when the facts of the two cases are in no way comparable. In Award 4688, three positions of "stenographer - general clerk" which involved the taking of dictation in shorthand and typing the notes so taken, were abolished when the Carrier acquired new Ediphone equipment and three new lower-rated "typist-clerk" positions were created to accomplish the same work. That award stands for the principle that change in the method of performing work through the introduction of new machines to accomplish it does not give the carrier the right to abolish existing jobs and create new job titles at lower rates of pay to perform the same work.

In Award 12225, the Verifax Copier machine was operated by the Claimant while occupying position bearing the title "Waybill Clerk" before the position was abolished, as well as after the Claimant took the position of "Record Filer." No new method of operation was introduced here, and no justification for reliance on an award that turns on that factor exists.

Further error is committed in assuming that the higher rate of the position of "Waybill Clerk" is based in any part on the fact that one of the duties of the position is operation of the Verifax Copier. The record is replete with evidence to the contrary since other positions operate the machine "as occasion requires," and it is shown by the record to be a simple machine, requiring no training or skill. There is no relation between the "Waybill Clerk" rate and the Verifax Copier machine operation, and the majority is in error when it concludes this Carrier should pay the higher rate based on this factor alone.

For these reasons, we dissent.

D. S. Dugan
P. C. Carter
W. H. Castle
T. F. Strunck
G. C. White