

Award No. 13311

Docket No. CL-13054

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

William H. Coburn, Referee

**BROTHERHOOD OF RAILWAY & STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS & STATION EMPLOYES
GULF, MOBILE AND OHIO RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5094) that:

(a) The Carrier violated the Agreement at Chicago, Illinois, when it claimed to abolish the position of General Clerk and established a "new" position under a different title covering relatively the same class of work for the purpose or having the effect of reducing the rate of pay.

(b) Claimant E. C. Strother shall be additionally paid for difference between the rate of the "abolished" position (\$20.909 per day) and that of the "new" position (\$19.928 per day) for September 16, 1960 and each subsequent date thereafter that a like violation occurs.

EMPLOYES' STATEMENT OF FACTS: 1. Prior to September 16, 1960 the following positions were maintained in the Carrier's Stores Department, Chicago, Illinois:

- 1 Storekeeper, Excepted from Clerks' Agreement
- 1 General Clerk, Group 1, fully covered
- 3 Section Stockmen, Group 1, fully covered
- 1 Counterman, Group 3, fully covered
- 1 Laborer, Group 3, fully covered

Effective at close of business, September 15, 1960, the Storekeeper retired and all positions in the Stores Department were claimed to be abolished. All materials on hand were charged out to the using departments. The Carrier's Mechanical Department, which operates Brighton Park Coachyard Shop and Glenn Locomotive and Car Shop in Chicago, was instructed that all future requisitions for material should be sent to the Storehouse at Bloomington, Illinois, from whence the material would be shipped directly and handled by Mechanical Department personnel. All stock books, requisition books, catalogues, and records in possession of the Stores employees were transferred to the offices of the Mechanical Department Foremen at Glen and Brighton Park.

2. The position of General Clerk, Stores Department, rate \$20.909 per day, was held by the Claimant, E. C. Strother. Upon the discontinuance of his position, Claimant bid on and was awarded a position titled "Mechanical Department Clerk," rate \$19.928 per day, which was advertised as a new position by

following statement by the Board in Third Division Award No. 6413 is apropos to the instant case:

"This Board has by the very nature and provisions of the Railway Labor Act, authority only to interpret and apply the provisions of the Agreement, and rules, as agreed upon between the parties themselves. We have, as a Board, no authority to fix the rates of pay or to require what the duties of a position shall include. That is a problem for the parties to determine either by negotiation or by the provisions of the Agreement itself. Since there is no evidence that Carrier acted in a capricious manner, or willfully violated the provisions of the Agreement, we cannot substitute our judgment for that of Carrier. It is the right and duty of Carrier to establish and apply the rate of pay for work performed by its employees. Any disagreement between the parties can only be reached through negotiation. The record does not disclose that Carrier has misapplied the rate as established. As support for this holding we refer to Awards 5093, 5864, 1861, 1074."

In conclusion, Carrier has shown that:

(1) The newly established position of "Mechanical Dept. Clerk" in Carrier's Mechanical Department at Glenn-Brighton Park bears no relationship to the abolished position of "General Clerk" in Carrier's former storehouse;

(2) The position of "General Clerk" in Carrier's former storehouse in the Chicago Terminal was properly abolished pursuant to Rule 65 (c);

(3) The newly established position of "Mechanical Dept. Clerk" at Glenn-Brighton Park was rated pursuant to Rule 65 (d); and the Brotherhood's contention that higher rate should have been established therefor is without foundation.

The claim is devoid of merit, and should be denied.

OPINION OF BOARD: On September 15, 1960, the Carrier closed two storehouses in the Chicago Terminal and abolished all clerical positions at these facilities, including that of the Claimant who then held the highest rated clerical job, titled "General Clerk" and paying \$20.909 a day.

Following the closing of the storehouses, materials and supplies for the Mechanical Department at the Chicago Terminal were requisitioned and shipped directly from the storehouse at Bloomington, Illinois, and thereafter handled by personnel of the Mechanical Department. An additional clerical position paying \$19.928 per day was established within the latter department. It was bid in by the Claimant.

The claim is based upon the Employees' contention that the Carrier violated the agreement in allegedly making a "paper abolishment" of the position of "General Clerk" and transferring the work thereof to the newly-established and lower-rated position of Mechanical Department Clerk.

The applicable and controlling Agreement language is contained in Rule 65 and reads as follows:

"(a) 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.

* * * * *

"(d) The wages for new positions shall be in conformity, but not necessarily equal, with the wages for positions of similar kind or class in the seniority district where created. If an abolished position is restored, its former rate (subject to general wage revisions) will be restored."

The Employees rely on paragraph (a); the Carrier on paragraph (d).

The Board's decision thus must turn on what is clearly a question of fact. For the Employees to prevail they must show by credible evidence that the position of Mechanical Department Clerks covered "relatively the same class of work" as that formerly performed by the General Clerk. Failure to do so would bring paragraph (d) into full force and effect and no violation could consequently be found.

The only evidence offered by the Employees on this key question of fact is a description of the duties attaching to the two positions here involved which was set out in a statement submitted by the Claimant.

The Carrier's description of the job duties of the respective positions is also in evidence and purports to show that the responsibilities of the Mechanical Department Clerk were less onerous and exacting than those of the abolished position.

In weighing the evidence submitted by the parties, the Board finds the Employees have failed to meet the test of proving their case by substantial evidence of probative value. The statement of the Claimant must be given the usual weight accorded any such self-serving declaration. Standing alone, that statement is clearly insufficient to support the burden of proof which the Employees must meet in order to prevail.

In view of the lack of substantial evidence to support a finding that paragraph (a) of Rule 65 was violated, it follows that paragraph (d) of that rule is applicable and controlling. 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 23rd day of February 1965.