

Award No. 14606
Docket No. CL-14233

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David Dolnick, Referee

PARTIES TO DISPUTE:

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

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5350) that:

(1) Carrier violated the Clerks' current Agreement at East St. Louis, Illinois, when it reduced the rates of pay of three positions which were transferred from Florida Street Station, St. Louis, Missouri, to East St. Louis, Illinois, effective November 6, 1961.

(2) (a) That Miss Margaret Shelley and her successor, and/or successors, be compensated for the difference in rate of pay of the Chief Inbound Rate Clerk position, which paid \$21.18 daily at St. Louis, but which was reclassified as General Clerk at daily rate of \$20.10 when same was established at East St. Louis, or a difference of \$1.08 daily, beginning November 6, 1961, and for all subsequent dates on which a like violation occurs.

(b) That Mr. George Nelson and his successor, and/or successors, be compensated for the difference in rate of pay of the Chief Outbound Rate Clerk, which paid \$21.18 daily at St. Louis, but which was reclassified as Rate Clerk at daily rate of \$20.59 when same was established at East St. Louis, or a difference of 59 cents daily, beginning November 6, 1961, and for all subsequent dates on which a like violation occurs.

(c) That Mr. W. J. Wiegrefe and his successor, and/or successors, be compensated for the difference in rate of pay of the Chief Claim Clerk, which paid \$20.82 daily at St. Louis, but which was reclassified as Claim Clerk at daily rate of \$20.08 when same was established at East St. Louis, or a difference of 74 cents daily, beginning November 6, 1961, and for all subsequent dates on which a like violation occurs.

EMPLOYEES' STATEMENT OF FACTS: For more than forty years prior to November 6, 1961, Carrier has had a clerical force and Group 3 laborers at Florida Street Station, St. Louis, Missouri, and a clerical force at East St. Louis, Illinois. During August, 1960, information was received

Exhibit No. 3 is copy of Advertisement N-23, issued May 23, 1961. It shows the successful applicants for the positions advertised May 16. Note on the bulletin postponed the effective date. This postponement was necessary due to notice by the Missouri Public Service Commission of a hearing to be held regarding Carrier moving the freight station from St. Louis, Missouri to E. St. Louis, Illinois.

After hearing was held and Carrier was free to make the move, notice was issued to clerical employes at St. Louis freight station October 25, 1961, reading: (Exhibit 4)

"Effective with close of business Sunday, November 5, 1961, station operation at Florida Street Station, St. Louis, Missouri, will be transferred to East St. Louis, Illinois, and all positions presently assigned at Florida Street Station will be abolished.

Effective Monday, November 6, 1961, positions covered by my Advertisement N-21, Clerks, dated May 16, 1961, will be established in East St. Louis, Illinois. Successful applicants to these positions, listed in footnote of Advertisement N-23, Clerks, dated May 23, 1961, will protect their new assignments on Monday, November 6, 1961."

The move was made in accordance with the notice; the employes assigned May 23 (Exhibit 3) starting work on their positions at East St. Louis November 6, 1961.

November 17, 1961, claim was filed that the three following positions were improperly rated: (Exhibit 5)

Position Established at East St. Louis		Claim should carry rate of former position at St. Louis	
Title	Daily Rate	Title	Daily Rate
General Clerk	\$20.10	Chief Inbound Rate Clerk.....	\$21.18
Rate Clerk	\$20.59	Chief Outbound Rate Clerk.....	\$21.18
Claim Clerk	\$20.08	Chief Claim Clerk.....	\$20.82

Claim was denied, as shown by Exhibits 6 through 11.

Exhibits 1 to 15, inclusive, are attached hereto and made a part hereof.

The applicable schedule agreement is that with the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes effective April 1, 1946, as modified by Supplemental Agreement dated July 22, 1949, and Memorandum of Agreement dated August 5, 1950, relating to the 40-hour week, copies of which are on file with the Board.

(Exhibits not reproduced.)

OPINION OF BOARD: Carrier first argues that the claims are barred because Claimants and the Petitioner did not comply with the time limits provided in Article V of the August 21, 1954 National Agreement.

The local freight offices at St. Louis, Missouri and East St. Louis, Illinois, were to be consolidated. Clerical positions at St. Louis were scheduled to be abolished, and on May 16, 1961, Carrier bulletined clerical positions for East St. Louis. Claimants filed their bids and on May 23, 1961, were assigned to the positions listed in the advertisement, but they were not

actually assigned to work at those positions until November 6, 1961. Carrier's notice, dated October 25, 1961, addressed to all clerical employees in the St. Louis local freight office, advised them that effective with the close of business on November 5, 1961, the station operation at St. Louis would be transferred to East St. Louis, and that all present positions at St. Louis would be abolished. That notice continued as follows:

"Effective Monday, November 6, 1961, positions covered by my Advertisement N-21, Clerks, dated May 16, 1961, will be established in East St. Louis, Illinois. Successful applicants to these positions, listed in footnote of Advertisement N-23, Clerks, dated May 23, 1961, will protect their assignments on Monday, November 6, 1961."
(Emphasis ours.)

The claims were first presented to the Carrier on November 17, 1961.

Carrier contends that the claims should have been filed within 60 days from May 16, 1961, as provided in Section 1(a) of Article V of the August 21, 1954 Agreement, which says:

"(a) All claims or grievances must be presented in writing by or on behalf of the employee 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. . . ." (Emphasis ours.)

While the positions were advertised on May 16, 1961, and the bulletin contained the new rates of pay for the positions, the "occurrence" on which the claims were based was not until November 6, 1961. Claimants suffered no damages until they assumed their new positions on November 6, 1961. It was only then that they acquired the right to protest. This is supported by the fact that the Carrier had no authority to close the local freight station at St. Louis and effectuate the consolidation until September 26, 1961, when the Public Service Commission of the State of Missouri authorized the Carrier to move its freight facilities to East St. Louis. This order became effective November 6, 1961.

The record also shows, without contradiction, that the General Chairman telephoned the Manager of Personnel on May 23, 1961, and protested the rates of pay on the positions listed in the May 16, 1961 bulletin.

Carrier also argues that the "General Chairman did not advise Superintendent Holden that his decision which denied the claim was rejected" as required in Section 1(b) of said Article V. The record shows that the General Chairman first presented the claim to Carrier's Agent on November 17, 1961. The claim was denied not by the Agent, but by the Superintendent, on December 26, 1961. On January 17, 1962, the General Chairman appealed the decision to the First Assistant Manager of Personnel, and sent copies of that letter to both the Agent and to the Superintendent. This is noted in the January 17, 1962, letter and the receipt thereof by the Agent and the Superintendent is nowhere denied. It is in full compliance with Section 1(b) of said Article V.

For the reasons heretofore stated, Petitioner complied with the time limit provisions of Article V of the August 21, 1954 National Agreement, and the claims shall be considered on the merits.

Carrier abolished the St. Louis positions of Chief Outbound Rate Clerk, Chief Inbound Rate Clerk and Rate Clerk, and established by bulletin the positions of Rate Clerk and General Clerk in East St. Louis.

There is no question that Carrier had the right to abolish the three positions at St. Louis and establish the two new positions at East St. Louis when the freight stations were consolidated. The only question before the Board is whether or not the duties and responsibilities of the Claimants in their new positions at East St. Louis are identical with the duties and responsibilities they had in St. Louis.

Carrier is not permitted to discontinue existing positions and create new ones for the purpose of reducing rates of pay. Rule 51 of the applicable agreement says:

"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 rates of pay or evading the application of these rules."

There is no serious dispute that Claimants performed "relatively the same class of work" in East St. Louis that they did in St. Louis. Carrier contends only that no supervision was required in either position at East St. Louis, and that the established rates were the same as the rates for similar positions at East St. Louis. But there is no evidence that Claimants supervised anyone in St. Louis, even though the job titles may have indicated this. It is not disputed that Claimants did not exercise any supervisory authority at St. Louis. Claimants may not have been properly classified in St. Louis, but that gives Carrier no right to unilaterally reduce rates of positions established by long practice and held by Claimants in St. Louis. A change in job titles does not per se justify a change in rates of pay.

The rates of pay for similar positions at East St. Louis have no bearing on the issue at hand. Only the duties and responsibilities of the Claimants in the former and present positions are pertinent.

Carrier clearly violated Rule 51 when it reduced the rates of pay for the positions established in East St. Louis.

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 Carrier violated the Agreement.

AWARD

Claims sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 29th day of June 1966.

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