

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

David L. Kabaker, Referee

PARTIES TO DISPUTE:

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

CHICAGO & EASTERN ILLINOIS RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5506) that:

(1) Carrier violated rules of agreement effective April 22, 1955 when it failed and refused to properly rate positions of Accountants at Chicago Heights, Illinois — as advertised by Vacancy Bulletin No. 7 of February 5, 1963 at \$20.00 per day.

EMPLOYEES' STATEMENT OF FACTS: On February 5, 1963 Carrier's Assistant Comptroller, Mr. M. J. Lesh, called Local Chairman, C. I. Burman into his office and discussed with him a desire to create two positions of Accountant at a rate of pay of \$20.00 per day which rate was \$1.06 per day less than the lowest prevailing position of this kind and class in the seniority district involved; with the assertion that they would be training positions to assist the assignees to learn all phases of accounting work. Local Chairman Burman informed Mr. Lesh that such an understanding should be handled with the General Chairman. When contacted the General Chairman informed Mr. Lesh that we could not accept this reduced rate unless he would write a letter as follows:

1. That in case of any reduction in force of accountant positions; these two positions would be the first abolished; and
2. That the rate of these two positions would not be cited to prejudice the position of our Organization on any case involving accountant work.'

Mr. Lesh promptly agreed to furnish us with a letter agreeing to the above two understandings and posted the Bulletin No. 7 advertising the two positions, Employees' Exhibit No. 1(A), however, he included thereon a requirement that applicants must take a Level 1, Accounting Achievement Test

Dear Sir:

Referring to your letter dated June 12, 1963 appealing from decision of Mr. Nelson in protest account rate established for two new positions in the Accounting Department.

In his letter of February 27 to you Mr. Lesh advises that the two positions in question do not have the responsibilities or the authority of the positions upon which the higher rate is based. In the circumstances I must agree that the rate established is in keeping with the duties and responsibilities of the positions in question.

Yours very truly,

/s/ G. E. Morgan
G. E. Morgan
Director of Personnel
& Public Relations

m:s"

Rule 28 of the agreement between the parties, a copy of which is on file with your Board, states:

"Rule 28 — 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."

Article V, 1(a) of the agreement dated August 21, 1954, provides, in part, as follows:

"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 the occurrence on which the claims or grievance is based." (Emphasis added.)

(Exhibits not reproduced.)

OPINION OF BOARD: At the time the Carrier established two new "Accountant" positions at \$20.00 per day the following positions were in existence in the seniority district:

Accountant	\$21.06 per day	Price Clerk	\$20.55 per day
"	21.06 " "	A.A.R. Clerk	20.99 " "
"	21.31 " "	Material Clk.	22.02 " "
"	21.33 " "	Statistician	22.20 " "
"	21.55 " "	Hd. A.A.R. Clerk	22.52 " "
"	21.55 " "	Statistician	23.38 " "
"	22.02 " "		

The Organization contends the Carrier violated the Agreement when it established the two new "Accountant" position at \$20.00 per day, because

the new positions are comparable to accountant position rated at \$21.06 per day.

The Carrier contends that the claim be dismissed on procedural grounds because it was initially designated by Employees as a protest rather than a claim and was not identified as a claim until seventy five days after the dispute arose.

The Carrier further contends that the claim be dismissed on merits for the reason that the two new positions are not of a similar kind or class to other accountant positions in the seniority district. It therefore concludes that the rate of \$20.00 per day is just and equitable.

The contention that the claim be dismissed on procedural grounds can not be sustained, for the reason that the Carrier did not raise this as a claim in accordance with the provisions of the Agreement. Additional support for denial of Carrier contention on procedural grounds is founded on the fact that the claim is one of continuing violation. Hence, these Article V issues are not properly before this Board and will not be considered.

As to the merits of the claim, the record reveals that the Organization offered to accept the proposed rate of \$20.00 per day for the new positions on condition that the Carrier agree in writing to the following:

1. That in any case of any reduction in force in accountants positions, these two positions would be first abolished, and
2. That the rate of these two positions would not be cited to prejudice the position of our Organization on any case involving accountant work.

The Carrier failed to agree in writing to the above conditions and it must therefore be the conclusion that the rate of \$20.00 per day was established unilaterally, without agreement or negotiation.

Rule 28 does not sustain the Carrier's action in establishing the rate of the two positions in the absence of agreement with the Organization.

The record reveals that the duties of the two newly created positions encompassed assisting higher rated clerks and accountants as well as lower rated personnel. In such case, Rule 27 would govern the rate to be paid to the employees of the two positions.

It must be the conclusion that the Carrier improperly rated the two positions of accountants at \$20.00 per day and the claim must therefore be sustained.

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 violated.

AWARD

Claim is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 2nd day of August 1966.