

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David Dolnick, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES
THE COLORADO AND SOUTHERN RAILWAY COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5430) that:

1. The Carrier violated the Clerks' Agreement at Denver, Colorado, beginning February 28th, 1962, when it abolished position of Report Clerk, rate \$19.25 per day, and assigned the duties of that position to positions of Weighmaster, Yard Clerk, Car Clerk, and Relief Clerks.
2. Carrier now be required to increase the positions of Weighmaster, occupied by R. H. Kernan; Car Clerk, occupied by D. J. Houk; Yard Clerk, occupied by K. R. Cleary; and Relief positions for the above assignments, occupied by P. R. Marshall, W. U. Kelly, and D. W. Beckingham, to \$19.25 per day effective February 28th, 1962.
3. All employes involved in or affected by the agreement violation be compensated for all losses sustained from February 28, 1962 until the violation is corrected.

EMPLOYEES' STATEMENT OF FACTS: Prior to February 28th, 1962, a position, known as "Report Clerk", existed in Colorado and Southern Local Freight Office, at Denver, Colorado, hours of assignment 9:00 A.M. to 6:00 P.M., rest days of Saturday and Sunday, with work attached thereto of photographing or filming of waybills, reports, etc., and other work in connection therewith. Rate of pay of \$19.25 per day.

At close of business on February 28th, 1962, the position was abolished. There was a full eight (8) hours' work on the position at time of abolishment.

Concurrently therewith the Company installed a Bruning Copy Flex Machine in Rice Yard Office.

The work of photographing or filming of waybills, reports, correspondence, etc., was discontinued in the Local Freight Office on February 28th, 1962, and the same type of work assigned to clerks in the Yard Office to be performed on the Bruning Copy Flex Machine. In other words, copies of waybills, reports, etc., are being made on the Bruning Copy Flex Machine

claimants R. H. Kernan and K. R. Cleary, respectively; one Car Clerk position, daily rate of \$18.595 and occupied by claimant D. J. Houk; and, of course, the assigned relief positions of the Weighmaster, Yard Clerk and Car Clerk positions which were occupied by claimants P. R. Marshall, W. U. Kelly and D. W. Buckingham.

The principal work of these nine positions was of a general clerical nature which required "clerical ability" and the established rate of pay therefor had basically been determined on the quality of the "clerical ability" required. The occasional operation of the Copyflex machine was incidental to the requirement of such "clerical ability" on these particular nine positions as was the operation of the "Recordak" merely incidental to the required "clerical ability" attaching to the eight specified clerical positions in the Freight Agent's office and upon which primary requirement the established rate of pay had basically been determined. In other words, the inauguration some time ago of use of the "Recordak" in the Freight Agent's office and the occasional operation thereof by the occupants of the eight clerical positions previously referred to by individual titles made no change in the going rates of pay applicable thereto and, of course, justified no change therein, either up or down.

On May 21, 1962, the Local Freight Agent (Mr. F. O. Burke) received a letter bearing the date of April 19, 1962, wherein the General Chairman of the Clerks' Organization (Mr. John H. Moberly) initiated the instant claim beginning February 28, 1962, that is, eighty-two (82) days after discontinuance of the Report Clerk position in the Freight Agent's office and one hundred and fifteen (115) days after institution of the Copyflex machine in Rice Yard Office. Local Freight Agent Burke replied to General Chairman Moberly under date of June 5, 1962 (Carrier's Exhibit A), and, in addition to refuting the charge of "Agreement violation", and denying the claim on the absence of merit therein, Mr. Burke also took exception to the General Chairman's presentation of the claim at variance with the procedural requirements of the "Time Limit" rule, to which Mr. Burke properly referred as Article IV, Appendix No. 3, of the Clerks' Agreement.

On the Organization's sequential appeal thereof to the highest designated officer of the Carrier, the Assistant to Vice President (Mr. R. D. Wolfe) under date of November 30, 1962 (Carrier's Exhibit B), reaffirmed the propriety of debarment of the claim under pertinently applicable provisions of the Time Limit Rule (Article IV, Appendix No. 3, Pages 64, 65, 66 and 67 of the current Clerks' Agreement), and, in addition, set forth, beyond all element of reasonable doubt, that in the entire transaction, unrelated as were some of the factors made to appear involved therein, there were no higher rated duties assigned to lower rated positions.

Following conference on the subject on March 27, 1963, the Assistant to Vice President reiterated the original position of the Carrier relative thereto in letter written same date of conference (Carrier's Exhibit C).

(Exhibits not reproduced.)

OPINION OF BOARD: The Report Clerk in the Local Freight Office, among other duties, made a record of waybills on a Recordak copying machine. That position was abolished on February 28, 1962, and the duties, other than photographing waybills, were assigned to other clerks at this office.

Prior to the abolishment of the Report Clerk position, a Bruning Copyflex machine was installed at the Yard Office which was used incidentally by clerks in that office to make copies of various documents, including the photographing of waybills.

Employees contend that the Claimants, who operate the Bruning Copyflex machine "are performing higher rated work" which should carry the rate of the abolished Report Clerk position.

It is necessary to determine whether Carrier violated Rules 45 and 55 of the Agreement. Rule 45 provides that any employee temporarily or permanently assigned to a higher rated position shall receive the higher rate for the day, and Rule 55 states that a position "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. . . ."

The record shows that all of the clerks, including the Report Clerk, had used the Recordak machine to make copies of waybills. The record also shows that all the clerks at the Yard Office use the Bruning Copyflex machine to make such copies. There is no probative evidence in the record that the operation of copying machines is the basis for a higher rate or that the rate of the abolished Report Clerk position was predicated on the operation of the Recordak machine. On the contrary, the record is clear that the copying duties were, prior to February 28, 1962, and are now, incidental to the general clerical duties of the employees at both the Local Freight Office and at the Yard Office. There is also no convincing evidence that the duties of the clerks at the Yard Office were "substantially changed" within the meaning of Rule 55.

Mere allegations are not sufficient to support the claim. The Employees are obliged to show by a preponderance of relevant evidence that the Rules were not complied with. *This burden of proof has not been met.*

Since there is no basis for the claim on its merits, it is not necessary to consider the alleged procedural defects raised by the Carrier.

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of October 1966.

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