



Award No. 15063
Docket No. CL-15653

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

George S. Ives, Referee

PARTIES TO DISPUTE:

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

SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5750) that:

(a) The Carrier violated the Clerks' Agreement when, effective August 15, 1963, it abolished the position of Machine Operator (No. 818), rate of pay \$20.42 per day and thereafter allowed or required other employees with different assigned preponderating duties to perform work properly assigned to Machine Operator, Position No. 822, assigned to W. J. McDonald.

(b) W. J. McDonald shall be compensated 407 hours at the time and one-half rate of \$21.13 per day; this for the period August 15, 1963 through October 18, 1963, and each date thereafter that the violation continues.

(Reparations to be determined by a joint check of Carrier's payroll and/or other records.)

EMPLOYEES' STATEMENT OF FACTS: This dispute is between the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees as the representative of the class or craft of employees in which the claimant in this case holds position and the Southern Railway Company.

On August 8, 1963, there were two (2) positions identified as Machine Operator-Clerk in the office of Southern Railway's Director of Revenue Accounting, Passenger Division, Atlanta, Georgia. One was position No. 818 with a rate of pay of \$20.42 a day. The other position was No. 822 with a rate of pay of \$21.13 a day. Each had preponderating duties advertised as:

"To wire plugboards and operate IBM Printer, Summary punch, Reproducer, Interpreter, Collator and Sorter; to prepare stock of agents' local and interline tickets; to verify ticket invoices and prepare for mailing ticket stock."

On August 8, 1963, effective August 15, 1963, position No. 818 was abolished, and thereafter employees other than Mr. W. J. McDonald were allowed or required to perform the duties assigned to his position.

"RULE 46.
PRESERVATION OF RATES AND EMPLOYMENT

(a) (Effective June 1, 1921) Employees 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 employee. Assisting a higher rated employee due to a temporary increase in the volume of work does not constitute a temporary assignment.

* * * * *

(e) (Effective June 1, 1921.) Except as otherwise provided in these rules, 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.

* * * * *

(f) (2) Nothing in this Rule 46 shall affect or prevent the abolishment of positions at any time."

(Exhibits not reproduced.)

OPINION OF BOARD: We are confronted in the first instance with the contention by Carrier that the claim presented to the Board is not the same claim that was handled on the property, and thus is not properly before us for consideration.

The original claim filed on the property is set forth in a letter addressed to Carrier's Director, Revenue Accounting, dated October 29, 1963 and the full text thereof is set forth in Employees' Exhibit A. The pertinent language of the original claim is as follows:

"This claim is filed for and in behalf of Mr. W. J. McDonald, Machine Operator, Clerk, of the Passenger section, account of other clerks performing the duties of his position. Rule 30 of the Clerks' Agreement is violated when the clerks are required to suspend their work during regular hours to absorb overtime work as was done in this case.

All of this has come into being since the position 818 was abolished on August 15, 1963. . . ."

Paragraph (a) of the Claim submitted to the Board by Petitioner reads as follows:

"(a) The Carrier violated the Clerks' Agreement when, effective August 15, 1963, it abolished the position of Machine Operator (No. 818), rate of pay \$20.42 per day and thereafter allowed or required

other employees with different assigned preponderating duties to perform work properly assigned to Machine Operator, Position No. 822, assigned to W. J. McDonald."

A comparison between the Statement of Claim as submitted to the Board and the specific claim submitted to the Carrier on the property reveals a substantial variance. The claim as originally filed was premised on an alleged violation of Rule 30 (Absorbing Overtime) of the Agreement between the parties, whereas, the claim before the Board is bottomed upon a charge that Carrier violated the controlling Agreement by abolishing the former Machine Operator position effective August 15, 1963.

Carrier properly avers that no claim was filed alleging improper abolishment of the position of Machine Operator within 60 days from August 15, 1963 and that the particular dispute submitted to the Board was not handled on the property as required by Section 3, First (i) of the Railway Labor Act.

The objection raised by Carrier is not merely procedural or technical as the claim before the Board departs to a significant degree from the claim submitted and processed on the property. It is essential that the issues be the same as those which were determined on the property. (Awards 5077, 9343, 10078, 10749.)

Therefore, we must find that the claim here presented has not been handled on the property as required by Section 3, First (i) of the Railway Labor Act and Circular No. 1 of the National Railroad Adjustment Board. Hence, the claim will be dismissed.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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 claim is not properly before this Board.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 15th day of December 1966.

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