



Award No. 15166

Docket No. CL-15901

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, Referee

PARTIES TO DISPUTE:

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

**CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5843) that:

1. Carrier violated the Clerks' Rules Agreement at Milwaukee, Wisconsin when it established a new Steno-Clerk Position No. 0760 in Seniority District No. 22 at a rate of pay less than that of a position of a similar kind in the seniority district.

2. Carrier shall now be required to rebulletin Steno-Clerk Position No. 0760 at a rate of pay comparable to that of Steno-Timekeeper Position No. 0717.

3. Carrier shall now be required to compensate employee Laurel A. Chalifoux, her successor or successors, if there be any, for the difference between the rate at which Position No. 0760 was established and the rate of similar Position No. 0717 for November 24, 1964 and all subsequent work days until the violation is corrected.

EMPLOYEES' STATEMENT OF FACTS: On November 14, 1964 Bulletin No. 348 was issued to employees in Seniority District No. 22 advertising Steno-Clerk Position 0760 at a rate of \$20.618 per day. The principal duties of this position are: "Stenography — assist in preparation of payrolls — related duties. Applicant must be a stenographer." Copy of Bulletin 348 is submitted as Employees' Exhibit A.

There is a Steno-Timekeeper position 0717 in effect in Seniority District 22, the duties of which are similar to those established for new Steno-Clerk Position 0760 and its rate of pay is \$20.9784 per day.

The above rates were increased in the amount of 9 cents per hour effective December 1, 1964, and an additional 9 cents per hour effective January 1, 1965 in line with the Agreement of November 20, 1964.

On November 17, 1964 the following letter was addressed to Mr. R. E. Chalifoux:

"Referring to your Bulletin No. 348 advertising a new position of Steno-Clerk at a rate of \$20.618.

CARRIER'S STATEMENT OF FACTS: That portion of the instant claim in item 3 of the Statement of Claim reading " * * * her successor or successors * * * " is improper under the provisions of Article V of the Agreement of August 21, 1954 in that it pertains to unnamed employees and, therefore, said portion of the instant claim is barred.

As of November 1, 1956, and we use this date merely because we do not wish to unduly burden the record by going all the way back to the very beginning, the agreed-to or negotiated rate of pay for the position here involved was \$16.916 per day and this fact is apparently not in dispute. Applying the negotiated general wage adjustments which have resulted from the various National Agreements since November 1, 1956 provides the following results insofar as concerns the negotiated rate of pay of the position here involved.

Date of Adjustment	Hourly Adjustment	Daily Adjustment	New Rate of Extra Gang Timekeeper Positions
May 1, 1957	3c increase	\$.24 increase	\$17.156
Nov. 1, 1957	7c increase	.56 increase	17.716
Nov. 1, 1957	5c increase	.40 increase	18.116
May 1, 1958	4c increase	.32 increase	18.436
Nov. 1, 1958	7c increase	.56 increase	18.996
Nov. 1, 1958	1c increase	.08 increase	19.076
Nov. 1, 1959	3c increase	.24 increase	19.316
May 1, 1960	1c increase	.08 increase	19.396
July 1, 1960	5c increase	.40 increase	19.796
Feb. 1, 1962	4c increase	.32 increase	20.116
May 1, 1962	6.28c increase	.5028 increase	20.6188

Therefore, as of August 3, 1964, when the position here involved was temporarily abolished, the negotiated rate of pay therefore was \$20.6188. When the position here involved was reestablished on November 14, 1964, the rate of pay applied thereto was the same negotiated rate of \$20.618 per day.

Attached hereto as Carrier's Exhibit A is copy of letter written by Mr. S. W. Amour, Assistant to Vice President, to Mr. H. V. Gilligan, General Chairman, under date of April 6, 1965.

(Exhibits not reproduced.)

OPINION OF BOARD: By Bulletin No. 348, dated November 14, 1964, Carrier established a "New position" of "Steno-Clerk" designated "Position No. 0760" (subsequently changed to Position No. 0782) with rate of pay \$20.618 per day. The duties were described as "Stenography — assist in preparation of payroll — related duties. Applicant must be stenographer." Claimant was assigned to the position. The Claim is for difference in rate of pay between the new position and Position No. 0717 having a rate of pay of \$22.7784 per day. Petitioner contends that the two positions are of similar kind or class in the same seniority district and therefore Carrier was contractually bound by the following provision of the Agreement to establish the rate of the new position in conformity with the rate of Position No. 0717:

**"RULE 18.
RATES — NEW POSITIONS**

The rates for new position will be in conformity with rates for positions of similar kind or class in the seniority district where created. In the absence of a similar position in the district the rate of pay for the new position will be established by agreement between the Carrier and the General Chairman."

Carrier says that the new position was a reestablishment of a position that had been abolished; therefore, the negotiated rate of the abolished position was applicable. Inasmuch as Carrier's Bulletin No. 348 correctly designated the "Steno-Clerk" as a "New Position" Rule 18, clearly required Carrier to establish the rate of pay: (1) "in conformity with rates for positions of similar kind or class in the seniority district where created;" or, (2) in the absence of such an existing position "by agreement between the Carrier and the General Chairman." Award Nos. 2239, 3555, 4127, 15058. Carrier failed to comply with either of these prescriptions. Consequently, it violated the Agreement.

There remains to be determined whether there was in fact a similar existing position in the seniority district.

Carrier has stated that the work load of Position 0717 increased so that it became necessary to establish the "New position" to assist the occupant of Position 0717. Rule 18 does not require that the occupants of both positions must do identical work; only work of "similar kind or class." We find that the work of the "New position" was of similar kind or class. We will sustain the Claim.

Carrier's contention that paragraph 3 of the Claim on behalf of "successor or successors" is barred because Article V of the August 21, 1954 Agreement requires the naming of each individual for whom claim is presented is without merit. National Disputes Committee Decision No. 19.

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

Claim sustained.

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

**ATTEST: S. H. Schulty
Executive Secretary**

Dated at Chicago, Illinois this 20th day of January 1967.
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