



Award No. 16553
Docket No. CL-17108

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, Referee

PARTIES TO DISPUTE:

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

**THE DENVER AND RIO GRANDE WESTERN
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6336) that:

1. Carrier violated rules of the Clerks' Agreement when it created a new position of Tariff Bill Clerk at the rate of \$22.61 per day on April 25, 1966.
2. Carrier shall now rebulletin this position at rate of \$24.31 per day.
3. Mr. D. F. Smith shall now be paid the difference between \$22.61 and \$24.31 per day, or \$1.70 per day, plus subsequent increase retro-active to July 1, 1966 for each and every day he occupies this position, and continuing until this violation is corrected.

EMPLOYEES' STATEMENT OF FACTS: Under date of April 25, 1966, Bulletin No. 1846 was posted in the Carrier's Traffic Department at Denver, Colorado, advertising new position titled "Tariff Bill Clerk" at rate of \$22.61 per day (Employees' Exhibit No. 1). Position was assigned to D. F. Smith, Claimant.

Under date of April 27, 1966, the Local Chairman wrote Mr. C. R. Lennig, Assistant Vice President-Traffic, protesting the rate of pay shown on Bulletin No. 1846 and called his attention to the provisions of Rule 53 (Employees' Exhibit No. 2). Mr. Lennig rejected the Local Chairman's protest in his letter of May 4, 1966, (Employees' Exhibit No. 3).

Position titled "Tariff Bill Clerk" was abolished at close of business December 7, 1965, Bulletin No. 1818, (Employees' Exhibit No. 4). The work attached to this abolished position was assigned to Tariff Compiler No. 2 position. As previously stated, a new position titled "Tariff Bill Clerk" was bulletined under date of April 25, 1966, Bulletin No. 1846, at rate of pay lower than Tariff Compiler No. 2 in that department.

1. Carrier violated rules of the Clerks' Agreement when it created a new position of Tariff Bill Clerk at the rate of \$22.61 per day on April 25, 1966.

2. Carrier shall now rebulletin this position at the rate of \$24.31 per day.

3. Mr. D. F. Smith shall now be paid the difference between \$22.61 and \$24.31, or \$1.70 per day, retroactive to July 1, 1966.'

Carrier's position in this case is unchanged and the claim remains denied.

Yours truly,

/s/ E. B. Herdman
E. B. Herdman
Dir. of Personnel"

The position of Tariff Bill Clerk advertised in Carrier's Bulletin No. 1846 was awarded to Mr. D. F. Smith after which his former position of Tariff Compiler No. 2 was advertised in Bulletin No. 1852, copy of this bulletin is shown below:

"BULLETIN

(Advertising New Position or Vacancy)

Place: Denver, Colorado Date: April 29, 1966 Bulletin No.: 1852

All Concerned:

The following position is hereby advertised for applications or bids in accordance with Rule 10 of the Clerks' Agreement. Applications or bids shall be submitted to the undersigned (Copy to the Local Chairman) where they will be received up to: 4:45 P. M., May 3, 1966.

Location: Denver, Colorado Title of Position: Tariff Compiler #2
Rate of Pay: \$24.31 per day Hrs. of Assignment: 8 AM to 4:45 PM
Assigned Rest Days: Sat&Sun Meal Period: 12 Noon to 12:45 PM
Vacated By: D. F. Smith Permanent or Temporary: Permanent
Principal Duties: Compile freight tariffs in accordance with all rules and regulations, handle correspondence pertaining thereto, also other related duties.

cc: J. A. Witherwax C. M. Wildt
R. J. Schneider J. L. Wells
A. D. Cox F. J. Corrigan

/s/ C. J. Harbeke (Name of Official)
Title: Vice President-Traffic"

OPINION OF BOARD: Under date of April 25, 1966, Carrier posted Bulletin No. 1846 advertising position of Tariff Bill Clerk with rate of pay of \$22.61 per day. On June 12, 1966, Clerks filed claim that the rate of pay

for the position should be \$23.81 per day. Carrier's representative authorized to receive the claim denied it on July 25, 1966. On August 30, 1966, Clerks withdrew the claim and then under that date filed another claim alleging the identical violation and naming the same Claimant.

Carrier, citing Section 1(b), Article V of the August 21, 1954 Agreement, argues that Clerks withdrawal of the June 12, 1966 claim without perfecting an appeal after denial by Carrier bars Clerks from again filing the identical claim. Carrier moves that we dismiss the claim. Motion granted. See Award Nos. 10251, 10453, 12851, 16010, 16265.

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 claim is barred under Article V of the August 21, 1954 National Agreement.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 2nd day of August 1968.