



**Award No. 16802**  
**Docket No. CL-16557**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**Bernard E. Perelson, Referee**

**PARTIES TO DISPUTE:**

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

**DULUTH, MISSABE AND IRON RANGE RAILWAY COMPANY**

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood (GL-6152) that:

(1) Carrier violated the effective Clerical Agreement, particularly Rules 9, 23, 40(b), 41(a) and 42(a), and their application in Carrier's General Office, in assigning work of the Investment Accountant to Claimant, the incumbent to a Key Punch position, on December 21, 1965, and subsequent dates.

(2) Claimant Peterson shall now be compensated in addition to the rate of Key Punch Operator, the rate at which he was compensated, the difference between the rate of Key Punch Operator and the rate of Investment Accountant, \$8.33 per day for December 21, 1965, and each subsequent work day thereafter that this violation continued. The dates of this continuing violation to be established by a joint check.

**EMPLOYEES' STATEMENT OF FACTS:** Claimant Peterson was regularly assigned on the dates of this claim to the position of Key Punch Operator in the Key Punch section of Carrier's Accounting Department. The rate of pay of Claimant's regular assignment on the initial date of this claim was \$21.60 per day. Claimant was physically removed from the position of Key Punch Operator at Carrier's instruction, suspended performance of his assigned duties, and required to perform clerical duties attached to the position of Investment Accountant. The rate of pay of the position of Investment Accountant on the initial date of this claim was \$29.93 per day.

The duties of Investment Accountant were completely dissimilar and unrelated to the duties to which Claimant was regularly assigned by bulletin as Key Punch Operator. The location of the Key Punch Operator position was also completely different from the location of the Investment Accountant. Claimant was required to perform duties of the Investment Accountant commencing on December 21, 1965, and thereafter into the month of February 1966, without benefit of the higher rate to which he was properly entitled.

Furthermore, claimant had not worked in the Accounts Payable Section prior to the instant dispute and does not possess the knowledge necessary to fulfill the position of Investment Accountant.

The Investment Accountant would not have performed this work, since it is considered menial and minimum rated work. The Investment Accountant is paid approximately \$10 per day more than a minimum rated clerical employee. The core of the duties and responsibilities of the Investment Accountant is not the performance of routine, menial duties, but rather it is the qualifications and knowledge necessary to properly perform the technical duties of the position.

The work in dispute was properly assigned to the claimant under the language contained in the bulletin, "and any other duties as may be assigned." Carrier has, over a period of many years, used employees to perform certain work not specifically stated in the bulletin under the above proviso without any objection from the Organization.

The instant claim was properly handled in accordance with agreement rules. (Copies of correspondence involved are attached and marked as Carrier's Exhibit A.)

(Exhibits not reproduced.)

**OPINION OF BOARD:** The Claimant was a regularly assigned Key Punch Operator in the Key Punch Section of the Carrier's Accounting Department, having been assigned to that position by bulletin bearing date the 29th day of April, 1965. His rate of pay was \$21.60 per day. The Accounting Department is under the jurisdiction of the Carrier's Comptroller's Office, located in the Wolvin Building, Duluth, Minnesota. The Carrier's General Offices are also located in the same building. All of the various Departments of the Carrier located in the building are in Seniority District No. 1.

The Claimant claims that on December 21, 1965, he was instructed to and did report for work in the Carrier's General Accounting Section to perform certain duties attached to the position of Investment Accountant. He further claims that the rate of pay of the position of Investment Accountant is the sum of \$29.93 per day and that by reason of his being assigned to perform such duties he is entitled to receive the difference between the rate of pay of a Key Punch Operator and that of the Investment Accountant or the sum of \$8.33 per day for every day he worked in the office of the Investment Accountant. That the failure of the Carrier to make such additional payment to him was in violation of the applicable provisions or Rules of the Agreement between the parties, Rules 9, 34, 40(b), 41(a) and 42(a).

The Carrier denies any violation of the applicable provisions or rules of the Agreement.

The various rules cited by the Claimant, read as follows:

**"RULE 9. BULLETINS**

(a) Except as provided in Rule 1, all new positions and vacancies will be promptly bulletined in agreed-upon places accessible to all employees in all districts for a period of five (5) calendar days, bulletin

to show location, title and description of position, rate of pay, assigned hours of service, assigned meal period and assigned rest days. Employees desiring such positions will within five (5) calendar days of date of posting of the bulletin, file their application with the official whose name is signed to the bulletin, sending copy to Local Chairman. The name of the successful applicant will immediately thereafter be posted for a period of five (5) calendar days where the position was bulletined.

(b) Successful applicants for bulletined positions will be placed thereon as quickly as possible but not later than five (5) calendar days after notice of assignment.

(c) When more than one vacancy or new position exists at the same time, employees shall have the right to bid on any or all, stating preference. Nothing in these rules shall be construed to prevent employees bidding on all bulletined positions, irrespective of whether the position sought is of the same, greater or lesser remuneration.

(d) Employees declining promotions or declining to bid for a bulletined position shall not lose their seniority."

#### "RULE 34. ABSORBING OVERTIME

Employees will not be required to suspend work during the regular hours to absorb overtime."

#### "RULE 40.

##### PRESERVATION OF RATES

(b) 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. The rate of pay of an employee will not be changed when filling the position of an employee off on sick leave who is receiving pay."

#### "RULE 41. RATING POSITIONS

(a) Except as provided in Paragraph (b), positions (not employees) shall be rated and the transfer of rates from one position to another shall not be permitted."

#### "RULE 42.

##### NEW POSITIONS AND RATES DISCONTINUED

(a) The wages for new positions will be in conformity with the wages of analogous positions (of similar kind and class) in comparable localities."

Claimant contends that the Carrier violated the provisions of Rule 9 — Bulletins — when it required the Claimant "to perform duties not contemplated when the Key Punch Operator position was bulletined."

In Award 13195 (Coburn) we said:

"A job bulletin is merely an advertisement and not in the legal sense, an offer, the timely acceptance of which would constitute a binding contract. Its nature is informational, not contractual. It cannot be employed to create, modify or destroy legal relations such as those embodied in the basic Agreement between these parties. (Cf. Awards 10095 and 11923.)"

This Board has also held on numerous occasions that bulletins are not intended to set forth in detail the work of the position nor all of its functions. Its purpose is to generally outline the work or type of work the position covers so that an employee may acquaint himself sufficiently with the nature of the duties in order that he might determine as to whether or not he is qualified and desires to bid. Other duties not specifically named may be added without destroying the identity of the position. The Agreement does not require that each duty to be performed is required to be listed in the description of duties contained in the bulletin. See Awards 11923, 15484 among others.

Claimant also contends that when the Carrier required him to leave the location of his bulletined assignment to perform clerical work at another location, which was not stated, nor contemplated in the bulletin of April 22, 1965, was also a violation of Rule 9. The record discloses that the change involved was from one section to another section in the same department, in the same building and in the same seniority district.

This Board has held that the Carrier has the right to require a Claimant to work in two places under certain conditions. In Award 12332 (Dolnick) we said:

" \* \* \* does Carrier have the right to require the Claimant to work in two places? In the absence of any rule in the Agreement to the contrary, the answer is again in the affirmative. This is so even though the original bulletin specified only one location. It is particularly so if, as here where the work started and ended at the same location, and both the passenger station and freight depot were in the same seniority district."

See also Awards 10950, 13201, 13525 among others.

The record discloses that the work in question was performed in the same location, in the same seniority district and that the work was performed during the Claimant's regularly assigned working hours.

Rule 34 — Absorbing Overtime — reads as follows:

"Employees will not be required to suspend work during the regular hours to absorb overtime."

This Board has previously construed the meaning of the rule.

In Award 13192 (Coburn) we said:

"To support the charge of rule violation, the Employees must show that a Claimant has been required to suspend work on his assignment.

and to perform the work of another position which, otherwise, would have to have been performed on an overtime basis by the incumbent of the latter position. Awards 7167, 5331."

See also Awards 14242, 14974, 14080, 14114 among others.

The record discloses that the Claimant was not required to suspend work on his assignment.

It is mandatory for the Claimant, in order to support a claim under this rule, to affirmatively show that the suspending of work was to "absorb overtime." The record in this dispute is barren of any evidence to support or sustain any such intention or result.

With reference to the alleged violation of Subdivision (b) of Rule 40 — Preservation of Rates.

A careful review of the record reveals that when the original claim was made, by letter of February 16, 1966, the claim was that "the Carrier arbitrarily blanks the position that Mr. Peterson is on and assigns him to **HELP** the Investment Accountant, Mr. Odin Olson, with A. F. E. records." (Emphasis ours.)

The claim before us is that the Carrier violated the Agreement "in assigning work **OF** the Investment Accountant to Claimant, the incumbent of a Key Punch position \* \* \*."

The Carrier specifically denies that the Claimant did perform work which was assigned to the Investment Accountant and did not and has not performed higher rated work. The Carrier does set forth the type of work performed by the Claimant and states that the work in question has been performed by minimum rated clerks in the past.

This fact is not refuted by Claimant.

We have held that even if the duties involved had been of the type at times performed by the Investment Accountant, that fact, in of itself, would not be sufficient to support the claim without some further pertinent proof that the duties were not simply lower rated work that may or could be assigned to any position.

In Award 4567 (Whiting), where a similar rule was under consideration, we said:

"The Organization stresses the phraseology 'position or work.' Certainly it is not the intent of the rule to pay a higher rate for the performance of every task which an accountant might perform. For example an accountant might sharpen his pencil but so might an office boy, or an accountant might use an adding machine but so do lower rated clerks. Surely sharpening one's pencil or operating an adding machine is not necessarily performing the work of an accountant. Hence it can only be the assignment of work significant to the position of Accountant which will justify payment of the rate for Accountant.

\* \* \* \* \*

An Accountant may perform all of the book and paper work in an office in slack times but that does not mean that all of it is work significant of an accountant's position. Surely the lower rated duties he is performing may be assigned to clerks when business volume increases without making all of them eligible for accountant's pay. . . ."

See also Award 15175.

The Organization, being the proponent, always has the duty and obligation of submitting and presenting factual evidence to substantiate its claim. This must be done by a preponderance of evidence. This it has failed to do. We have searched the record and do not find a scintilla of evidence to support the basic contention upon which the claim before us rests. We will deny the claim.

**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 Employes involved in this dispute are respectively Carrier and Employes 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 not violated.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 22nd day of November, 1968.