

Award No. 16925
Docket No. CL-17389

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John J. McGovern, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY, AIRLINE 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-6352) that:

1. Carrier violated the Clerks' Rules Agreement at Seattle, Washington when it unilaterally established a rate of pay for a new position of Clerk in Seniority District No. 104 without agreement between the parties.

2. Carrier shall now be required to rebulletin Clerk Position No. 14760 to the employees in Seniority District No. 104 at a rate of pay of \$23.7024 per day.

3. Carrier shall now be required to compensate Employee D. L. Hildahl, the present occupant of Clerk Position No. 14760, his successor or successors, if there be any, for the difference between the rate unilaterally established for the position, i.e., \$21.9499, and \$23.7024, for each day subsequent to June 8, 1966 until such time that a rate is properly established by agreement.

EMPLOYEES' STATEMENT OF FACTS: Seniority District No. 104 covers the Traffic Department at Seattle, Washington. The January 1, 1966 seniority roster covering this district shows there are ten (10) employees in this district; however, up until June 1, 1966 there were two positions in the district; namely, the Chief Clerk and Secretary, both covered under the provisions of Rule 1(d) of the Clerks' Agreement.

On June 1, 1966, Bulletin No. 7 was issued to employees in District No. 104 for Clerk Position 14760 at a rate of pay of \$21.9499 per day. Employee D. L. Hildahl was assigned to this position by Bulletin No. 8 dated June 8, 1966. See Employees' Exhibits A and B respectively.

At the time Bulletin No. 7 was issued to employees in District 104 advertising Position 14760 at a rate of \$21.9499 per day to perform the following duties "Answer telephone, rate quotations, tracing cars, handling diversions

On June 1, 1966, Mr. O. R. Anderson, Traffic Manager, issued Clerks' Bulletin No. 7 reestablishing the aforementioned position. Copy of Clerks' Bulletin No. 7 is attached hereto as Carrier's Exhibit A.

The rate of pay applied to Clerk Position No. 14760 as of June 1, 1966, i.e., \$21.9499 per day, is the negotiated rate thereof or, in other words, the rate applicable thereto when the position was abolished on October 6, 1959, with all negotiated general wage adjustments which have resulted from the various National Agreements since that date applied thereto.

Attached hereto as additional Carrier's Exhibits are copies of the following letters:

CARRIER'S EXHIBIT B - Letter written by Mr. S. W. Amour, Vice President-Labor Relations, to Mr. H. C. Hopper, General Chairman, under date of February 9, 1967.

CARRIER'S EXHIBIT C - Letter written by Mr. Amour to Mr. Hopper under date of July 19, 1967.

(Exhibits not reproduced.)

OPINION OF BOARD: On June 1, 1966, Bulletin No. 7 was issued for Clerk position 14760 at a rate of pay of \$21.9499 per day. Claimant was assigned to this position by bulletin No. 8 dated June 8, 1966. At the time Bulletin No. 7 was issued, there were no positions of a similar kind or class in the district and there was no effort by the Carrier to establish a rate of pay for this position by Agreement with the General Chairman.

Petitioner maintains that this was a new position and as such Carrier was bound to follow the provisions of Rule 18—New Positions. This Rule reads:

"RULE 18.

RATES - NEW POSITIONS

The rates for new positions 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 offers the argument that the position in question is the same one which was abolished in 1959, and that the rate of pay assigned to that position was the rate of the abolished position plus all negotiated pay raises since.

Rule 18 is singularly lacking in ambiguity. It is clear and precise as to meaning, intent, and purpose. This was a new position and the rate of pay should have been negotiated by the parties. The same issue and parties were involved in Award 15058 (Dorsey) in which it was held that the rate of pay can only be established through negotiation. We reaffirm that decision. Petitioner has based this claim on a rate of \$23.7024 per day. We have no power to approve this rate. It must be negotiated pursuant to Rule 18. Carrier has violated the Agreement, but because of the terms of this Rule, we must dismiss paragraph 2 and 3. Paragraph 1 is sustained.

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 violated in accordance with Opinion and Findings.

AWARD

Paragraph 1 sustained.

Paragraphs 2 and 3 are dismissed.

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

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 29th day of January 1969.