

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Paul C. Dugan, Referee

PARTIES TO DISPUTE:

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

BUTTE, ANACONDA & PACIFIC RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6672) that:

(1) Carrier violated the Clerks' rules agreement at East Anaconda, Montana, when, on Friday, April 5, 1968, it established a continuing position titled General Clerk (Yard) paying, as of that date, a rate of \$27.57.

(2) The Carrier shall now be required to restore the title of Chief Yard Clerk to the position at East Anaconda and assign this position the commensurate rate which, on date of claim, was \$29.10, and this amount shall be adjusted to reflect subsequent general wage increase.

(3) The Carrier shall now be required to pay H. W. Peterson, his substitutes and successors, \$1.53 for each day the position of General Clerk (Yard) was and is assigned to work commencing April 5, 1968, and said amount is to be adjusted to reflect all subsequent wage increases.

EMPLOYES' STATEMENT OF FACTS: Following a six-month strike by the Anaconda Copper Company employes in 1959, the surviving position at East Anaconda Yard was the Chief Yard Clerk. This position remained in effect at East Anaconda Yard up to and including July 15, 1967. On that date, the position was reduced by virtue of a notice posted July 10, 1967, which reads as follows:

"BUTTE, ANACONDA & PACIFIC RAILWAY COMPANY

Anaconda, Montana

NOTICE

July 10, 1967
2:00 P. M., MST

To All Non-Operating Employes:

Due to threatened strike action by various unions against the Anaconda Company in Butte and Anaconda, scheduled for Midnight

strike. Personnel records show 250 employes in our service July 1, 1967, and only 139 employes working in July, 1968.

Prior to the 1967 copper strike, the Carrier maintained an uptown freight office force in Anaconda. With the heavy loss in business and in order to have a more efficient and coordinated operation with improved communications, this office was moved to the East Anaconda terminal where train dispatchers, yardmasters and yard office personnel are employed. This relocation occurred about the time Carrier operations were being resumed in April, 1968. The new arrangement appeared to work out most satisfactorily to the Carrier and to all concerned working at this location.

It was not until June 2, 1968, when the Clerks' Local Chairman filed a continuous time claim in the name of claimant H. W. Peterson that the Carrier was aware of any disagreement or possible misunderstanding in manning the various bulletined assignments at the East Anaconda freight and yard office.

(Exhibits not reproduced.)

OPINION OF BOARD: This claim arose as a result of Carrier's abolishment of the position of Chief Yard Clerk at East Anaconda terminal at the beginning of a strike and the advertising of a position of General Clerk (Yard) in its stead at the termination of the strike.

The Organization contends that Rules of this Agreement, in particular Rule 39, were violated in this instance due to the fact that the duties and responsibilities of the General Clerk (Yard) position are the same as those assigned to the Chief Yard Clerk position, as supported by employes' statements to this effect and which statements were not contraverted by Carrier; that the Company is prohibited by Rule 39 of the Agreement from arbitrarily reducing the rate of a position.

Carrier's defenses to this claim are: (1) that Claimant bid on the assignment of the General Clerk's position at East Anaconda, was the successful applicant for the position, and accepted the conditions of the assignment, including the rate of pay applicable to said position; that Carrier did not re-activate the position of Chief Yard Clerk as alleged by the Organization; that the type of work of the position of General Clerk since April, 1968 has been performed by yard clerks, assistant yard clerks and other personnel whose basic daily rates of pay are inferior to that of a General Clerk; that Rule 39 is not applicable to the situation that existed when the General Clerk position was bulletined in April and May of 1968; that there are no guarantee rules provided for in the Clerks' Agreement.

Rule 39, Adjustment of Rates, provides as follows:

"When there is a sufficient increase or decrease in the duties and responsibilities of a position or changes in the character of the service required, the compensation for such position will be subject to adjustment by mutual agreement with the duly accredited representative, but established positions will not be discontinued and new ones created under the same or different titles covering relatively the same class or grade of work, except by negotiation."

The record clearly establishes that the Organization made a "prima facie" case of proving that Carrier violated the provisions of said Rule 39 of the Agreement when it discontinued an established position and created a new position under the same or different title covering relatively the same class or grade of work without negotiation.

Therefore, we will sustain part 1 of the claim. However, in regard to part 2 of the claim, we find that there is no rule in the Agreement that requires Carrier to restore the title of Chief Yard Clerk to the position at East Anaconda and thus this part of said claim is denied. We will sustain part 3 of 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 violated in accordance with the Opinion.

AWARD

Part 1 of the claim is sustained.

Part 2 of the claim is denied.

Part 3 of the claim is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 11th day of September 1970.