

Award No. 18301
Docket No. CL-18575

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Melvin L. Rosenbloom, Referee

PARTIES TO DISPUTE:

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

THE BELT RAILWAY COMPANY OF CHICAGO

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6700) that:

1. The Carrier violated the Clerks' Agreement, when on October 11, 1968 it abolished some five (5) positions in its IBM Machine Room rated at \$26.74 per day and subsequent thereto re-established positions 341 and 342 (NEW) with a daily rate of \$25.50 to perform exactly the same duties formerly performed by the occupants of the abolished positions.

2. The Carrier shall now be required to compensate L. Houska and L. DeVries and or successors, if any, the existing differential between \$26.74 and \$25.50 (plus subsequent wage increases) as well as interest payment at the current rate, on the amount of reparations due, effective December 20, 1968 and continuing so long as the violation continues, or until such time as corrective measures are applied.

EMPLOYEES' STATEMENT OF FACTS: The Carrier at its Clearing, Illinois facility maintains an IBM Machine Room, that was established by agreement in 1955. The function of the Machine Room was to perform on machines work which was performed manually or semi-manually. Prior to October 11, 1968, the work force in the Machine Room consisted of some eighteen (18) established Machine Operator Positions all rated at \$26.74 per day, which was within the negotiated maximum and minimum rates for work performed by the Clerical Machine Operators.

The rates of pay for the positions of Clerical Machine Operators were predicated on the basis that the incumbents of such positions may be used to perform work on any machine in the Machine Room. Employees' Exhibit No. 12.

The duties assigned to the Clerical Machine Operator Positions consisted of operating all punchcard equipment and machines printing records and reports therefrom, or as generally described in Bulletin No. 4. Employees' Exhibit No. 1.

OPINION OF BOARD: In June, 1955, a new office known as the "Machine Room" was established by agreement between the parties. The function of the Machine Room is the machine processing of clerical work which had theretofore been performed manually or semi-manually. The initial force of the Machine Room included several positions of Clerical Machine Operator. The rate of pay for Clerical Machine Operators was predicated on the ability of personnel in those positions to perform work on any machine in the Machine Room. It was understood that Clerical Machine Operators could be used on any machine in the room and the bulletins so reflected. As of October 11, 1968, eighteen (18) Clerical Machine Operator positions were in effect, all carrying the rate of \$26.74 per day.

Of these eighteen positions, the incumbents in eight (position numbers 310, 311, 312, 340, 297, 286, 290 and 309) were exclusively utilized in the operation of key punch equipment since approximately September, 1966. No formal change was made in the bulletins of these jobs at that time and clearly the employees involved could have been assigned to work upon other machines in the Machine Room, but, in fact, the employees in these eight positions worked only on key punch equipment during the two year period from September, 1966, to October 11, 1968.

On October 11, 1968, during a strike by Trainmen, five of these eight positions were abolished (position numbers 310, 311, 312, 340 and 297). Two months later, on December 11, 1968, two "new" positions (position numbers 341 and 342) entitled Keypunch Operator were advertised at a rate of \$25.50 per day. The sole relevant difference between the description of duties in the "new" and in the abolished positions is in the fact that operation of only keypunch equipment is required in the "new" jobs. On this basis, the Carrier justifies the establishment of the "new" positions to take the place of the abolished jobs and the unilateral setting of the new and lower rate.

The Carrier states that in the latter part of 1968 a change was in process which would convert the Machine Room from a unit record equipment operation into a computer operation. As a result, nearly all the machines in the Machine Room would be eliminated and their function would be taken over by the computer. The only operation which would remain the same would be the key-punch operation. The Carrier contends, therefore, that the job of Clerical Machine Operator was no longer required since the need for versatility of the personnel would vanish with the unit record equipment, and thereafter only keypunching skills would be required in the Machine Room.

The Brotherhood asserts that its Agreement with the Carrier was violated in that the Carrier abolished the five positions and shortly thereafter created two new positions at reduced rate to perform exactly the same duties which had been performed by the occupants of the abolished positions. Specifically, the Brotherhood cites the following provisions of its Contract as having been violated in this case:

"RULE 59.

The wages for new positions shall be in conformity with the wages for positions of similar kind or class where created."

"RULE 67.

When there is a sufficient increase or decrease in the duties and responsibilities of a position or change in the character of service required, the compensation from that position will be subject to adjustment by negotiation with the General Chairman, 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, which will have the effect of reducing the rate of pay or evading the application of these rules."

We cannot agree with the Carrier that the position of Key punch Operator is a "new" position. We are persuaded that position numbers 341 and 342 cover "relatively the same class or grade of work . . ." as did the abolished positions and therefore should carry the same rate of pay as the abolished positions, but even if we were to accept the contention of the Carrier that there is an important difference in the duties of Clerical Machine Operator and Key punch Operator we nevertheless would sustain the claim of the Brotherhood. The positions are not so dissimilar that we could reasonably find Key punch Operator to be a "new" position. At most, a plausible argument could go no further than to urge that there was a "decrease" in the duties of Clerical Machine Operator. Not only has keypunching always been a significant and substantial part of that position, but it is the aspect of the job which requires the most skill and training. It cannot be said that the new bulletin describes a wholly distinct and original set of duties. In the case where there has been a decrease in the duties of a position, Rule 67 requires adjustment in the rate by negotiation. The Carrier did not offer to engage in negotiation but rather set the rate unilaterally.

We hold, therefore, that the Carrier should assign a rate of \$26.74 per day (plus any subsequent applicable increases) to positions 341 and 342 and compensate the occupants of those positions for the difference between \$25.50 and \$26.74 per day (plus any subsequent applicable increases) for all time worked at the lower rate. We also are of the view that this is an appropriate case for the award of interest upon the monies due.

The Board does not adequately preserve the sanctity of the collective bargaining agreement unless it restores without loss the full measure of rights guaranteed by the contract to those who have been denied those rights, where, as here, the rights are unambiguous. Under the contract involved herein, an employee is entitled to rely on retaining the established rate of pay for the work he performs unless and until the contract provisions for changing that rate are met and strictly complied with. Additionally, the precise amount of loss suffered by the employees involved as a result of the violation herein is and has been liquidated, it being simply the difference between the rate paid during the period of violation and the rate that should have been paid during that period. We award interest at the rate of 7% per annum.

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 Agreement was violated.

AWARD

Claim sustained as indicated in Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 25th day of November, 1970.

CARRIER MEMBERS' DISSENT TO AWARD 18301, DOCKET CL-18575

In Award 18301 the majority did not agree with Carrier's contention that the positions that were established were new positions. To the contrary, the majority found that there had been a decrease in the duties and that in such instances Rule 67 requires adjustment in the rate by negotiation. It further found the Carrier did not offer negotiation, but rather set the rate unilaterally. The majority then proceeded to accept the rate of pay unilaterally demanded by the Organization. In accepting the rate demanded by the Organization the majority ignored the provisions of Rule 67 that require the adjustment of rate of pay by negotiation when there has been an increase or decrease in duties. By establishing the rate of pay for the positions the Board has exceeded its jurisdiction and is usurping a function specifically reserved to the parties by rule.

Error was then compounded by awarding of interest on monies allegedly due when no rule of the Agreement provides for the payment thereof. In awarding interest in the absence of any rule providing therefor the majority also exceeded the jurisdiction of the Board.

For these and other reasons we dissent.

G. C. White
R. E. Black
P. C. Carter
W. B. Jones
G. L. Naylor