

Award No. 18336

Docket No. CL-18654

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 EMPLOYEES**

**NORFOLK AND WESTERN RAILWAY COMPANY
(Lines formerly operated by the Wabash Railroad Company)**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6690) that:

(1) Carrier violated the provisions of Rule 38 (b) and Rule 40 of the Schedule for Clerks when on Friday, September 20, 1968, it unilaterally abolished Positions numbered 6-7-8 and R 23 and on the same day, Friday, September 20, 1968, re-established Positions numbered 6-7-8 and R 23 at a reduced rate of pay.

(2) Carrier will now pay the difference in the established rate of the above named positions (\$25.8856) per day plus all subsequent wage increases and that rate which the Carrier has arbitrarily placed in effect on said positions (\$25.2886) per day, for Thursday, September 26, 1968, and each day thereafter that Carrier violates the provisions of Rule 38 (b) and Rule 40 of the Schedule for Clerks for the following named employees:

E. R. Chapman	Position # 6
R. W. Robertson	Position # 7
F. J. Anderson	Position # 8
R. Riojas	Position R 23

(3) Carrier will now make whole any and all employees who were adversely affected as a result of this arbitrary and unilateral action on the part of the Carrier. These employees to be determined through means of a joint check of the payroll.

(4) In addition to the money amounts claimed herein, the Carrier shall pay claimants an additional amount of 6% per annum compounded annually on the anniversary date of claim.

EMPLOYEES STATEMENT OF FACTS: On December 15, 1967, the local union committee and Assistant General Chairman J. J. Yoffie met with Superintendent G. P. Hill and discussed the establishment of several new

and Rule 19 of the Schedule for Clerks, reads.

"Rule 19

CHANGES IN RATES

Except when changes in rates from negotiations for adjustments of a general character, the changing of a rate of a specified position for a particular reason shall constitute a new position and be bulletined. Any employee who may be relieved in process of such assignment may use his seniority in regular way."

The Local Chairman of the clerks' organization directed a letter to the Division Superintendent under date of September 21, 1968, requesting that the Carrier rebulletin the Positions Nos. 6, 7, 8 and R 23. This request was declined by the Division Superintendent in letter addressed to the Local Chairman dated October 24, 1968, and date for conference was established. Copy of all of those letters are attached hereto as Carrier's Exhibit "B."

Under date of November 18, 1968, the Local Chairman addressed letter to the Division Superintendent presenting claim on behalf of Clerks E. R. Chapman, R. W. Robertson, R. J. Anderson and R. Riojas, the incumbents of positions 6, 7, 8 and R 23, respectively, for the difference in pay between \$25.8856 and \$25.2886, for Thursday, September 26, 1968, and each subsequent day thereafter; a claim in favor of the incumbents of said positions prior to September 26, 1968, for any loss of pay; and a claim in favor of any and all employees who were placed in a worse position, requesting that these employees be determined through measure of a joint check of the payroll. Those claims were declined by the Division Superintendent in letter dated September 27, 1968. Copy of those letters are attached hereto as Carrier's Exhibit "C."

In letter dated January 15, 1969, the General Chairman of the clerks' organization appealed the Superintendent's decision and presented claims to the Carrier's Manager Labor Relations. The Manager Labor Relations declined the claims in letter dated February 11, 1969. Copy of those letters are attached hereto and marked Carrier's Exhibit "D."

This matter was again discussed in conference between the representatives of the parties on March 4, 1969, and the Petitioner's request that the Carrier pay the above mentioned claims was declined.

(Exhibits not reproduced.)

OPINION OF BOARD: Carrier, on July 19, 1968, bulletined Interchange & Yard Clerk positions Nos. 6, 7 and 8, and Relief Position No. 23, at the Luther Yard office, with rate of pay for each position at \$25.8856 per day.

On September 20, 1968, Carrier abolished the aforementioned positions on account of clerical error in computing rate of pay. On the same date, Carrier rebulletined the positions in question with the same hours and rest days but showing the rate of pay for each position to be \$25.2886 per day.

At the outset, the Organization member of this Board at the oral panel discussion contended that Carrier violated Rule 4(b) of the Agreement. However, close examination of the record discloses that at no time on the property or in the ex parte submissions and rebuttal, did the Organization allege that

Carrier violated said Rule 4(b). Therefore, in accord with a long line of Awards of this Board, too numerous to mention, we cannot now consider such a contention not raised on the property.

On the property, the Organization contended that Carrier violated the provisions of Rule 38(b) and Rule 40 of the Agreement by improperly reducing the established and agreed to rates on the four (4) positions in question.

Rule 38(b) reads as follows:

"No rate, rule or part of a rule in the Agreement will be eliminated, annulled or changed without the approval of the Vice President and General Committee for Clerks and after thirty (30) days' notice."

Carrier's position is that the positions in question were to be established at the rate of pay of \$24.4334 per day, however with the Clerks receiving a wage increase of 3½%, and in computing the increase, the rate of pay for the positions was erroneously computed to be \$25.8856 rather than \$25.2886 per day; that finding the error and that said rate of pay was not in conformity with the rate of pay for identical positions at the Brooklyn Yard, also part of the St. Louis Terminal Division seniority district for Clerks, Carrier complied with the requirements of Rule 19 of the Agreement, abolishing said positions and re-establishing them under the provisions of said Rules 3 (c) and 19; that the rate being paid those similar positions at the Brooklyn Yard, on the same seniority district as Luther Yard, where the positions in question are located, was not and is not in dispute.

If Carrier did not reduce the rate of pay to conform to the rate of pay for similar positions in the seniority district at the St. Louis Terminal Division, it would have been in violation of Rule 3 (c) of the Agreement, which provides: "The wages for new positions shall be in conformity with the wages for positions of similar kind or class in the seniority district where created."

There is nothing in the Agreement or in the record that shows that the rate of pay for the positions in question were agreed upon by the parties or negotiated rates of pay. Further, this Board has held in Award No. 15642 that: "it is a prerogative of management to correct errors that appear in bulletins, if no bad faith is involved. The Brotherhood recognizes this general rule." Also in Award No. 49 of Public Law Board No. 193, it was concluded that: "Corrections of clerical errors do not constitute a unilateral revision of the Agreement."

Finding that Rule 38(b) cannot be interpreted to govern an "error" in computation of rate of pay of a position, and further finding that a bona fide error was made by Carrier in this instance, it is the opinion of this Board that the Agreement was not violated and the claim is denied.

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 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 17th day of December 1970.

LABOR MEMBER'S DISSENT TO AWARD 18336 (DOCKET CL-18654)
(Referee Dugan)

The Referee erred in his decision in this dispute.

Carrier established new positions and affixed a rate of pay without objection from the Employees. Nothing in the Agreement prohibits the establishment of a group of positions at a uniformly higher rate. Carrier continued the positions as they were bulletined for over two months; at the end of that period of time, the positions were abolished and immediately re-established at lower rates of pay, without giving the required 30-day notice to the Employees and requesting negotiations as expressly provided for in Rule 38(b), and ignoring the requirements of Rule 40.

The Referee holds that clerical error was made in computing rate of pay of the positions. The undersigned submits that if an error was made in the payroll department, it was committed by the officer in charge of the department who is held responsible for whatever occurs; the clerical force is not in charge.

When representatives of the employees make mistakes, they cannot unilaterally reverse them but must either live with such mistakes to the end of time or attempt re-negotiations with the Carrier in an effort to undo the errors. Such procedure should apply equally to Carrier and its representatives when alleged mistakes are made by them. The Rules Agreement was jointly made; it is not a one-way document. By permitting unilateral action by Carrier, action in violation of the Agreement, the Board exceeded its jurisdiction and usurped a function reserved to the parties by the collective bargaining Agreement.

I dissent.

C. E. Kief
C. E. Kief, Labor Member
1/15/71

Keenan Printing Co., Chicago, Ill.

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