

Award No. 18483
Docket No. CL-18773

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Gene T. Ritter, Referee

PARTIES TO DISPUTE:

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

**PENN CENTRAL TRANSPORTATION COMPANY
(Northeastern Region)**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood GL-6763 that:

(a) Carrier violated the Clerks' Agreement between the parties effective September 15, 1957, as amended, when it transferred the duties and responsibility of the Lead Machine Operator position to the Machine Operator position.

(b) Carrier shall now be required to compensate Mrs. Jean O. Tower, Machine Operator, Data Processing Office, New Haven, Connecticut, the difference between the Machine Operator's rate of pay \$26.114 per day, and the rate of the Lead Machine Operator \$27.82 per day, in the amount of \$1.706 per day for the following dates; commencing January 13 through January 17, 1969 inclusive, and January 20, 1969.

EMPLOYEES' STATEMENT OF FACTS: There is an Agreement bearing an effective date September 15, 1957, including amendments and revisions, between the former New York, New Haven and Hartford Railroad Company and the Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees.

January 19, 1967 a Merger Protective Agreement for New Haven Railroad Employees was negotiated between the parties.

January 1, 1970 the Interstate Commerce Commission in its Order in Finance Docket 21989 decided November 25, 1968 the inclusion of the New York, New Haven and Hartford Railroad Company in the Penn Central System as of January 1, 1970 approved and directed, and in accordance with the Merger Agreement — paragraph d, reading:

"(d) The Merged Company will take over and assume all contracts, schedules and agreements between Pennsylvania, Central, and the labor organizations signatory hereto concerning rates of pay, rules, work-

of alleged violation of Rule 61, and also making reference to a Memorandum of Agreement effective January 12, 1959, which had for its purpose the reclassification of position titles and standardizing rates of pay of various classifications in the Data Processing Machine Department.

Copy of General Chairman Adinolfi's appeal letter is attached hereto as Carrier's Exhibit A.

Decision by Mr. J. J. Duffy, Superintendent-Labor Relations and Personnel, dated July 11, 1969, is attached hereto as Carrier's Exhibit B.

Agreement effective September 15, 1957 between the former New York, New Haven and Hartford Railroad and the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees is on file with this Board and is, by reference, made a part hereof.

A Memorandum of Agreement, effective November 5, 1958, establishing a new seniority district of Machine Accounting Bureau, and transferring machine work from five seniority districts into the Machine Accounting Bureau, is also on file with this Board. Item 9 of that Agreement reads as follows:

"It is understood that all positions in the consolidated Machine Accounting Bureau will handle any work formerly performed in the separate machine rooms.

It is further understood and agreed that the rates to apply to the positions covered by this agreement are the subject of further negotiation between the parties for the purpose of associating existing rates of pay with the work to be performed on any given position."

Accordingly, another Memorandum of Agreement was entered into, effective January 12, 1959, establishing job descriptions and standard rates of pay. Copy of this Agreement is attached hereto as Carrier's Exhibit C. The exhibits A, B and C mentioned in Item 2 of this Memorandum of Agreement are not reproduced here. Suffice it to say that Exhibit B established the rate for Lead Machine Operators at \$19.52 per day, and the rate for Machine Operators at \$18.018 per day. The present rates of these positions are \$27.8026 and \$26.1146 per day, respectively.

(Exhibits not reproduced.)

OPINION OF BOARD: Due to illness, the incumbent of position No. 8, Lead Machine Operator with a weekly rate of \$139.10, was absent for his assignment on the dates for which Claim is filed. On those dates, Claimant, regularly assigned to position No. 30, Machine Operator at the \$130.57 weekly rate operated the machine normally operated by the Lead Machine Operator. The Organization contends Claimant is entitled to the Lead Machine Operator's rate of pay for the dates in question under Rule 61. Carrier contends Claimant did not perform the duties of Lead Machine Operator, but merely continued to operate a punch card machine which involved the same work as her position as Machine Operator.

The contention of Carrier is well taken. Rule 61 requires that in order for Claimant to be entitled to the higher rate of pay for the higher position of Lead Machine Operator, she must be assigned to and fulfill the duties of the

higher position. In the instant case, Claimant was neither assigned to nor did she perform any duty foreign to her normal duties as Machine Operator. The mere fact that she operated a different machine did not change her position from that of Machine Operator. If Claimant had supervised or trained other employees during the absence of the Lead Machine Operator, this opinion might have been different. However, there is a total lack of necessary proof of any assumption of Lead Machine Operator's duties entitling this Claimant to the higher rate of pay. See Awards 16938 (Mesigh), 16536 (McGovern), 16828 by this Referee and others.

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

This claim will be denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 31st day of March, 1971.