

Award No. 18617
Docket No. CL-18811

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Robert A. Franden, Referee

PARTIES TO DISPUTE:

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

THE BELT RAILWAY COMPANY OF CHICAGO

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6804) that:

1. The Carrier violated the Clerks' Agreement, when on March 19, 1969 it abolished some ten (10) positions in its IBM Machine Room rated at \$27.27 per day and subsequent thereto re-established positions 345, 346, 347, 348, 349, 350 and 351 (NEW) with a daily rate of \$26.01 to perform exactly the same duties formerly performed by the occupants of the abolished positions.

2. The Carrier shall now be required to compensate M. Schultz, R. Krueger, J. Bernas, P. Slowik, H. Cizmarik, G. Weidner and R. Dagnino and/or successors, if any, for the existing differential between \$27.27 and \$26.01 (plus subsequent wage increases) as well as interest payment at the current rate, on the amount of reparations due, effective April 1, 1969 and continuing so long as the violation continues or until such time as corrective measures are applied.

EMPLOYES' 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 that was performed manually or semi-manually. Prior to the instant dispute, the work force in the Machine Room consisted of some eighteen (18) established Machine Operator Positions all rated at \$27.27 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 position 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. Employes' Exhibit No. 1.

\$26.01 was determined by a survey of similar jobs from a number of other railroads.

The Union is seeking in addition to the differential between \$27.27 and \$26.01 an **interest payment** at the so-called current rate. There is no such provision within the Agreement for interest on claims.

(Exhibits not reproduced.)

OPINION OF BOARD: In 1955 Carrier established by agreement with the Organization an IBM room at its Clearing, Illinois facility. Eighteen Machine Operator positions were established rated at \$27.27 per day. This rate was predicated on the basis that the incumbents of the machine operator positions could be used to perform work on any of the machines in the machine room.

The Organization alleges that in September of 1966 the principal duties of some eight Clerical Machine Operator positions were reduced and exclusively confined to keypunching with no reduction in pay. It is agreed that the positions of Clerical Machine Operator and Keypunch Operator are different positions with different duties.

In March of 1969 the Carrier abolished twelve Machine Operator positions and issued Bulletins advertising for bid seven Keypunch Operator positions with an assigned rate of \$26.01. The abolished positions included those on which the Organization alleged the duties had been reduced solely to keypunching.

The claim of the Organization is based on the reasoning that the reduction of duties alleged to have occurred in 1966 and the maintenance of the \$27.27 rate of pay constituted the establishment of the position and rate of pay for Keypunch Operators. Failure to reduce the rate of a position within a "reasonable" time after important duties have been removed from the position is alleged to be acquiescence in the establishment of the position at the former rate. The Organization alleges that the Carrier's action had the effect of abolishing established positions and rebulletining them without any change in duties at a lesser rate of pay in violation of Rule 67 of the Agreement between the parties.

"RULE 67 — ADJUSTMENT OF RATES

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 for 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 claimant's contention that the Carrier's use of the claimants for the sole purpose of keypunching had the effect of establishing those positions as Keypunch Operator positions. If we were to accept this line of reasoning we would have to find that during the period of September 1966 to March of 1969 the claimants had no right to perform work on

the other machines in the IBM room which were set out in the original bulletin. This would be an absurd conclusion.

In the exercise of managerial discretion the Carrier has the right to utilize employes to perform all or any part of the functions of a given position and failure to require the employes to perform all of those functions does not constitute a waiver such as to prohibit it from so utilizing the employes at a later time.

In March of 1969 the Carrier established totally new positions which limited the prerogative of the Carrier to assigning a certain type of work to the holders of those positions.

We are given as authority in the instant case Award 18301 by this Division in which the parties are the same and the issues almost identical. Said award found in favor of the Organization and sustained the claim. In that we are convinced that the award in that case is palpably in error we will decline to follow it.

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 not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 30th day of June 1971.

LABOR MEMBER'S DISSENT TO AWARD 18617 (DOCKET CL-18811)
(Referee Robert A. Franden)

The dispute involved in the instant Award is identical (except as to claimants and claim dates) to the dispute between the Clerks' Organization and The Belt Railway Company of Chicago which resulted in sustaining Award 18301 (Referee Melvin L. Rosenbloom). This well-reasoned Award properly concluded that the Agreement was violated.

In the instant case, the Referee dismissed the Opinion and Findings in Award 18301 with the nebulous statement, "* * * that the award in that

case is palpably in error * * *." Here, again, the Referee closed both eyes and ignored the facts, the literal language of the rules and a recent sustaining Award dealing with an identical dispute on the same property.

It is Award 18617 that is palpably in error, should not be allowed and contributes nothing but chaos to an already troubled situation.

I dissent.

/s/ **J. C. Fletcher**
J. C. Fletcher,
Labor Member
7-8-71

JCF/bjs

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