



Award No. 18666
Docket No. CL-18829

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

J. Thomas Rimer, Jr., 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-6803) that:

1. The Carrier violated the Clerks' Agreement when on March 31, 1969, it abolished Lead Clerical Machine Operator position No. 301, rate \$29.55 per day, and concurrent therewith established Lead Key-punch Operator Position No. 352 at a daily rate of \$27.50 to perform relatively the same class or grade of work.

2. The Carrier shall now be required to compensate H. K. Mills and/or successors if any, for the existing differential between \$29.55 and \$27.50 (plus subsequent wage increases), as well as interest payment, at the current rate, on the amount of reparations due, effective with the date of April 1, 1969 and continuing so long as the violation continues, or until such time as corrective measures are applied.

EMPLOYES' STATEMENT OF FACTS: Prior to March 31, 1969, there was regularly established in the Carrier's IBM Machine Room at Clearing, Illinois, the following positions with designated payroll classification:

Eighteen (18) established Clerical 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.

One (1) Lead Clerical Machine Operator position No. 301 rated at \$29.55 per day, which also was within the negotiated maximum and minimum rates for work performed by the Lead Clerical Machine Operator.

Effective April 1, 1969, the Carrier discontinued the Clerical Machine Operator positions (which are not involved in the instant dispute), as well as the Lead Clerical Machine Operator position No. 301 rated at \$29.55 per

Reports such as PER DIEM, PAYROLL, CAR RECORD BOOK, RECLAIM, DAILY JUMBO LISTINGS, DAILY INTERCHANGE REPORTS, etc., were prepared by the Machine Operators. (See Page 4 of the June 1, 1955 agreement, attached, as Carrier's Exhibit A to each of the above referred to cases on this subject.)

In 1968 it was contemplated that we would change our method of processing from using unit record equipment to a computer operation. By doing so, we would eliminate the need for Clerical Machine Operators because the unit record equipment would no longer be used after the computer took over.

The Carrier set September 1, 1968 as the tentative date for installation of the computer. However, the Brotherhood of Railroad Trainmen went out on strike against the Carrier in July and did not return to work until November of that year. During the month of October, while we were still shut down, we began to abolish the first of the Machine Operator positions.

The rate of pay on the position of Lead Machine Operator, including subsequent wage increases, was \$29.55 per day. In accordance with Rule 59 of the (new) current agreement effective March 1, 1964, as amended, the Carrier created the first of the Keypunch positions on December 11, 1968 which is the subject of Docket No. CL-18575. On March 19, 1969 Carrier posted notice that effective 4:30 P. M. March 31, 1969, the balance of the Clerical Machine Operator positions were being abolished, including the two (2) Lead Clerical Machine Operator positions. For a comparison of the duties, we attach a copy of the bulletins advertising the Lead Clerical Machine Operator position and the new Lead Keypunch position as Carrier's Exhibits A and B.

The Union filed its claim alleging that the rate of pay for the Lead Keypunch position had already been determined as \$29.55, or the same as a Lead Clerical Machine Operator. Petitioner also avers that the creation of this position was nothing more than a different title covering relatively the same class or grade of work, at a lower rate of pay, and without any change in duties, etc. The Carrier asserts that the Lead Keypunch position is a new position which does not require machine operation and other duties for which the Lead Machine Operator's rate was negotiated. The current rate being paid to Lead Keypunch Operators was properly established in accordance with the current agreement as being in conformity with similar rates. The rate of \$27.50 was determined based on a survey of what Keypunch Operators were being paid on a number of other railroads and the Lead Operator's rate was established accordingly.

In addition to the differential between \$29.55 and \$27.50, the Union is seeking an interest payment at the so-called current rate. There is no such provision in the agreement for interest on claims.

(Exhibits not reproduced.)

OPINION OF BOARD: The issue presented in this case by the Petitioner requires first, a finding of fact as to whether the abolishment of the position Lead Clerical Machine Operator and the creation of the position Lead Keypunch Operator represented an action by the Carrier governed by Rule 59 for new jobs or Rule 67 for changed jobs. Second, having made such determination as to whether a "new" or "changed" job is here involved, we must look

to the record to determine whether the Carrier complied with the terms of the applicable rule.

The rules read:

“RULE 59. NEW POSITIONS

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

“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 class or grade of work, which have the effect of reducing the rate of pay or evading the application of these rules.”

The Petitioner advances two arguments in attacking the action of the Carrier as being violative of the Agreement. While not necessarily compatible and, indeed, appear somewhat contradictory, we shall examine each with care including recent awards cited by the parties as being controlling and considered by them to deal with a similar fact situation involving the same parties on the same property.

It is first contended that a new job was not created, that there were no material changes in duties, and that the rate of pay for the abolished position title should obtain for the position now titled Lead Key Punch Operator. This position is advanced as a violation of Rule 67 which requires the negotiation of a rate for a changed job, although the Petitioner does not seek now nor did it then seek to negotiate a rate under that rule. It claimed only that the previously existing rate should be continued.

The Petitioner argues in its appeal to the Carrier's highest officer:

“As to the application of Rule 59, it is our considered judgment, that when establishing rates of pay for new positions, if as here, there are no comparable positions in effect, as contemplated by the rule, the parties are required to negotiate and agree upon rates therefor and Management, as here, cannot arbitrarily and unilaterally adopt and apply rates, which for example, are in effect in outside industry or other railroad properties.”

This statement would appear to acknowledge that a “new” position had been created but that the Carrier established a rate for the position in a manner not permitted under Rule 59 which, it is argued, required the negotiation of the rate to apply. Rule 59 does not, by its terms, require negotiation of the rate for a new position, but simply sets forth guide lines for the Carrier in fixing such rate of pay.

We now turn to the crucial point as to whether, in fact, the Lead Key-punch Operator is a new job or is a job “covering relatively the same class or

grade of work" as contemplated in Rule 67. Careful reading of the descriptions of the two jobs involved reveal material differences which justify the Carrier's action in bulletining the Lead Keypunch Operator as a new and distinct position limited to the supervision and scheduling of the keypunch section of a new Data Processing Department. No longer was there a job requirement to set up and operate a variety of office machines and to supervise their operation by Machine Operators, a position also abolished for the same reason as here. The Carrier eliminated all unit record equipment in the preparation of its reports and records through installation of the new data processing system and thus, removed a requirement for versatility and the wider degree of knowledge and experience which were fundamental to the abolished position.

Was the rate then established for this new position by the Carrier done so in compliance with Rule 59, which requires that it conform "with wages for positions of similar kind or class where created." Since no similar jobs existed in its own organization, it established a rate generally applicable with other carriers in the district. The rule does not restrict the Carrier in using such criteria in making a wage determination; in fact, no alternative means were available under the circumstances. The record shows that the Petitioner did not attempt to demonstrate that the rate did not conform to the criteria used by the Carrier, but simply asserted a right to negotiate under the rule where such right is not provided.

We have carefully reviewed Award 18301 (Rosenbloom) and the master file on which the Petitioner relies heavily. We have concluded that his finding that there was no material change in the duties of Clerical Machine Operator when titled Keypunch Operator to be wholly arbitrary. The opinion does not offer support for his finding by way of a comparison of duties previously performed and those of the new position which facts were available in the record. Further he did not deal with the issue narrowly framed by the Petitioner in its arguments supporting its claim.

In Award 18617 (Franden), cited by the Carrier, the argument there offered by the Petitioner is not available to the Petitioner in the case before us and therefore this finding is irrelevant to the instant dispute.

In both cases cited above, which in large degree are companion to the instant case, the record in each reveals that the Petitioner acknowledged changes in the principal duties between the jobs abolished and the jobs created. Its claims presented there were predicated on the fact that some employees performed the work of the new jobs exclusively for a period of many months at the rate of pay of the abolished jobs. Therefore, it was contended that the Carrier had in effect "established" the rate of the abolished job for the new job and was thus precluded from fixing a lower rate for the new job under Rule 59. Award 18617 found this argument untenable and denied the claim. In the case at hand the Petitioner shifts his position to assert that there were no changes in job duties and that the same job was re-titled as a device to pay a lower rate for the same set of duties and responsibilities.

In light of all the facts available from the record and significant prior awards we find that the Carrier did in fact establish a new position Lead Keypunch Operator and that it fixed a rate for that position in compliance with Rule 59.

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: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 29th day of July 1971.