

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19481
Docket Number CL-19490

Frederick R. Blackwell, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
PARTIES TO DISPUTE: (
(St. Louis Southwestern Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-7002)
that:

1. Carrier violated the Clerks' current Agreement, March 2, 1970, when it unilaterally and arbitrarily abolished the "Exception B" position of Chief Clerk Overcharge Claims, rate \$781.34 per month, and reestablished it as an "Exception C" position titled "Head Clerk Overcharge Claims", at a monthly rate of \$688.14, assigning it to Mr. L. S. Land; established an "Exception B" position titled "Chief Clerk Revenue Accounting Department" effective March 3, 1970, rate \$781.83; and abolished a Claim Clerk position, rate \$28.49 per day.

2. That the improperly established "Exception B" position as "Chief Clerk Revenue Accounting Department" be discontinued and the improperly classified "Exception C" position - "Head Clerk Overcharge Claims" - be reclassified as an "Exception B" position - "Chief Clerk Overcharge Claims" - in accordance with the current Agreement, at a monthly rate of \$781.34, subject to subsequent wage increases.

3. (a) That Mr. L. S. Land be paid an additional \$93.20 per month, which represents the difference between that he is now being paid as "Head Clerk Overcharge Claims" and that he should be paid as "Chief Clerk Overcharge Claims", effective March 2, 1970, and until the violation is corrected.

(b) That Mr. J. E. Lowry, the former occupant of the abolished Claim Clerk position and others, who may have suffered a wage loss because of of Carrier's unilateral action in the matter, be compensated for any such wage loss suffered until the violation is corrected.

OPINION OF BOARD: This Claim is predicated on the allegation that Carrier violated the Clerks' Agreement when, on March 2 and March 3, 1970, it unilaterally and arbitrarily effected changes in certain "Excepted" positions which, under the contract, could only be changed through negotiation and agreement. The contention is that Carrier violated the Agreement when it unilaterally:

1) Abolished the "Exception B" position of "Chief Clerk, Overcharge Claims", Office of Auditor, Freight Accounts, Tyler, Texas, rate \$781.34 monthly, (Freight Accounts is now known as "Revenue Accounting" and is so referred to hereinafter).

2) Restablished the above position as an "Exception C" position, entitled "Head Clerk, Overcharge Claims", same office, rate \$688.14 monthly. (This position was advertised on March 2, 1970 and assigned to Claimant L. S. Land on March 9, 1970.)

3) Established a new "Exception B" position entitled "Chief Clerk, Revenue Accounting Department", same office, rate \$781.83 monthly.

4) Abolished a Claim Clerk position, rate \$28.49 daily. Though this position could have been abolished in isolation from the other changes, it is alleged that the position's involvement with the wrongful changes in "B" and "C" positions made it also wrongful.

Petitioner alleges that the Agreement, including Rules 1, 39, 51, and 60, was violated by these actions by Carrier.

FACTS OF RECORD

Exception "B" and "C" positions are the subject of special treatment in Rule 1 (Scope) of the Agreement, in that "B" positions are made subject only to the application of specifically enumerated Rules while "C" positions are made not subject to Rule 4. This special treatment is reflected in the following pertinent quotations from Rule 1 of the Agreement.

"RULE 1 - SCOPE

* * * * *

B. The following positions shall be subject only to the application of Rules 1, 2, 3, 5, 6, 7, 12, 13, 16, 17, 19, 20, 21, 23, 25, 26, 46, 52, 54, 56, 57, and 61:

* * * * *

C. The following positions shall not be subject to Rule 4:

* * * * *

Thus, on the face of the Agreement Rules 39, 51, and 60 are not applicable to "B" positions, but they do apply to "C" positions.

The pertinent Rules, 39 and 51, read as follows:

"RULE 39 - Rating Positions

Positions (not employees) shall be rated and the transfer of rates from one position to another shall not be permitted."

"RULE 51 - Rates

Established positions shall not be discontinued and new ones created under a different title covering relatively the same class of work for the purpose of reducing the rates of pay or evading the application of these rules."

For many years prior to 1954, the St. Louis Offices had a "C" position which had been negotiated into the Agreement and listed under Scope Rule 1, as follows:

"Location:	Office or Department:	Title of position:
St. Louis -	Freight Claims -	Chief Overcharge Clerk"

In 1954 the St. Louis and Tyler offices were consolidated into the Revenue Accounting Office, Tyler, Texas. As a result of negotiations on the consolidation, the "Exception C" position of "Chief Overcharge Clerk" was reclassified as an "Exception B" position. The Clerks' Agreement, dated January 1, 1963, including Revisions, lists this "Exception B" position as follows:

"Location:	Office or Department:	Title of Position:
Tyler -	Auditor Freight Accounts -	Chief Clerk Overcharge Claims"

Thus, prior to 1954, the position of "Chief Clerk, Overcharge Claims" was negotiated into the Agreement as a "C" position, and remained in this status for many years prior to 1954. In 1954 it was negotiated from a "C" to a "B" position, and remained in this status until the disputed changes were made on March 2, 1970.

On March 1, 1955, pursuant to Memorandum Agreement of that date, an Exception "B" Chief Clerk position was transferred from Revenue Accounts to Miscellaneous Accounting where it continued as an Exception "C" position. The position was renamed "Chief Clerk to Auditor Misc. Accounts", and the change involved

a transfer across seniority district lines. As a result of this Agreement, the Clerks' Agreement provided only one "B" Chief Clerk position in the Revenue Accounts Department, i.e., the position of "Chief Clerk, Overcharge Claims".

On May 1, 1958, the Carrier unilaterally abolished the "C" positions of "Head Clerk, Interline Bureau", and "Head Clerk, Recheck Bureau", and combined them into the position of "Head Clerk, Interline-Recheck". This action reduced the number of "C" positions in the Revenue Accounting Department from five (5) to four (4); however, the subsequent reprint of the Agreement, dated January 1, 1963, listed the two positions as they existed prior to their combination into "Head Clerk, Interline-Recheck".

Petitioner does not dispute Carrier's right to have combined the two clerks positions, but contends that Carrier lost a "C" position by reason thereof. This is not the case according to Carrier, which asserts its May 1, 1958 action left it with an unfilled "C" position that could be filled whenever it exercised its right to do so.

About six months before Carrier made the March 1970 changes, Mr. M. L. Erwin, Carrier's Personnel Manager, talked with Mr. F. T. Byous, General Chairman, about an agreement to reclassify "Exception B" position "Chief Clerk Overcharge Claims" as an "Exception C" position "Head Clerk Overcharge Claims." The salary was not to be changed until the then incumbent left the assignment, at which time the salary would be reduced to the scale of an "Exception C" position. The General Chairman did not agree to the proposal.

Carrier asserts there was no record made of such a proposal having been made and that, if the above conversation came up, it was nothing more than conversation which could not be construed as a proposal.

On March 2, 1970, the retirement date of the then incumbent of the "B" position of "Chief Clerk, Overcharge Claims", the Carrier unilaterally made the changes complained of herein.

The duties of the newly established "C" position "Head Clerk, Overcharge Claims", as described by Carrier's bulletin of March 2, 1970, are to "Supervise and perform various clerical duties in connection with 'Overcharge Claims'". Petitioner contended on the property and in this appeal that these are the same duties and responsibilities of the abolished "B" position "Chief Clerk, Overcharge Claims."

In addition to the foregoing, the record contains a chronologue of Agreements which shows, according to Petitioner, that changes in "B" and "C" positions can be made only through negotiations. Carrier, on the other hand, chronologues a number of unilateral "B" and "C" changes in support of its contention that it had no duty to negotiate the changes complained of herein.

RULINGS ON PETITIONER'S CONTENTIONS

Petitioner alleges that Carrier's March 2, 1970 unilateral changes violated Rules 1, 39, 51, and 60 of the Agreement, inasmuch as Carrier could make such changes only through negotiated agreement. Petitioner specifically contends that (1) Rule 39 was violated when Carrier abolished one agreed "B" position, rated at \$781.34 per month and unilaterally established another "B" position rated at \$781.83 per month, in that this transferred the rate of one position to the other position, and (2) Rule 59 was violated when Carrier unilaterally established the abolished "B" position as a new "C" position at a reduced rate of pay. Petitioner contends further that Carrier lost a "C" position by the combining of two "C" Clerks positions on May 1, 1958 and, in addition, that abolition of the Claim Clerk position, being involved with other wrongful acts, violated the Agreement.

The Carrier, on the other hand, states in its submission that "the Employees have not protested changes in the names of offices or departments, titles of positions, duties or rates of pay of clerks on Exception "B" or "C" positions so long as the total number of positions in each office has not exceeded the total number in each office has not exceeded the total number listed in the agreement." Carrier further asserts that "B" positions are not subject to Rules 1, 39, 51, and 60 under the terms of the Agreement and, in addition, asserts that it did not lose a "C" position as a result of the May 1, 1958 combination of two "C" positions.

As regards the "C" position of "Head Clerk, Overcharge Claims" established on March 2, 1970, Carrier's submission states the following:

****It will be noted that Mr. Land placed his bid on such position which indicated he desired to work such position at the rate specified. This is the rate he has been paid, plus subsequent national wage increases negotiated by the organization. The position to which he was assigned before bidding in the position of Head Clerk Overcharge Claims was that of General Clerk, rate \$29.74 per day, which averaged about \$639.41 per month. Thus, Claimant Land actually increased his earnings almost \$50.00 per month after March 2, 1970 instead of suffering any loss.

He did not seek and accept assignment to the position of Head Clerk Overcharge Claims with the reservation that he was entitled to the rate of pay formerly paid the Chief Clerk Overcharge Claims.

Had the position of Chief Clerk Overcharge Claims remained as an Exception B position there is nothing to indicate that Mr. Lang would have been appointed to such position. And even if he had been appointed, there is no rule applicable to Exception B positions that would have required the Carrier to maintain the rate of \$781.34 on such position."

Finally, Carrier submits that the position of Claim Clerk was properly abolished under Rule 15.

As to whether the Carrier's actions herein could be taken unilaterally, or only through negotiation, we note that an action to enforce an obligation to negotiate would lie in a different forum. This Board has power to afford relief only where we find a violation of the Agreement and, we shall limit ourselves accordingly.

In examining the record to determine whether any such violation occurred, we will look first at Petitioner's contention concerning the claim clerk. Carrier was clearly authorized by Rule 15 to abolish this position, and the record does not demonstrate that its abolition was subsumed in an act that violated another Rule of the Agreement.

In regard to Petitioner's contentions concerning Rule 39, addressed to the changes in the "B" positions, we agree with Carrier's assertion that "B" positions are made not subject to Rule 39 by the terms of Rule 1B of the Agreement. Accordingly, Carrier's abolition of "B" position "Chief Clerk, Overcharge Claims" and establishment of a "B" position "Chief Clerk, Revenue Accounting, having this special immunity, did not constitute a violation of the Agreement.

Petitioner's contention concerning Rule 59, addressed to the establishment of the "C" position, stands on a different footing, however. These positions, under Rule 1C. of the Agreement are made not subject to Rule 4 of the Agreement, which means that "C" positions are subject to all other rules of the Agreement, including Rule 51. Carrier's submission contains no suggestion to the contrary.

Rule 51 reads as follows:

"RULE 51 - Rates

Established positions shall not be discontinued and new ones created under a different title covering relatively the same class of work for the purpose of reducing the rates of pay or evading the application of these rules."

On the record before us we shall sustain Petitioner's contention that the abolished "B" position "Chief Clerk, Overcharge Claims" and the new "C" position "Head Clerk, Overcharge Claims" covered "relatively the same class of work" as such term is used in Rule 51. Both of these positions are within the Scope of the Clerks' Agreement, and consequently, we find that Rule 51 was violated when the subject "B" position was discontinued and created as a "C" position at a reduced rate of pay. Petitioner's contention in this regard, made both on the property and in this appeal, has not been refuted by Carrier. Indeed, Carrier has nowhere in the record attempted to justify the reduced rate of the "C" position on the ground that it was a different position.

And whether Carrier had an unfilled "C" position has no relevance. A new position could have been established in any available "C" position, but this is not what happened. An established ongoing position was bulletined as a "C" position at reduced pay. It is also irrelevant that the first part of Carrier's action - the abolition of the "B" position - was not violative of the Agreement. If the position had been terminated, this non-violative status would have continued. But when the position reappeared as a "C" position, Rule 51 was violated. We will therefore sustain the claim to the extent that Carrier shall pay Claimant L.S. Land the difference between his pay rate as "Head Clerk Overcharge Claims" and the pay rate of the position "Chief Clerk, Overcharge Claims", effective March 2, 1970, and until the violation of Rule 51 is corrected.

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 in accordance with the Opinion.

A W A R D

Claim sustained to the extent indicated in the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

E. A. Killen
Executive Secretary

Dated at Chicago, Illinois, this 17th day of November 1972.