

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award Number 20474
Docket Number CL-20490

Joseph A. Sickles, Referee

(Brotherhood of Railway, Airline and Steamship
(Clerks, Freight **Handlers**, Express and Station
(**Employees**

PARTIES TO DISPUTE: (

(Grand **Trunk** Western Railroad Company

STATEMENT OF CLAIM:

Claim of the **System Committee** of the Brotherhood
(**GL-7400**) that:

(1) The Carrier violated the **Agreement** when it abolished the position of Secretary, Medical Department, rate \$42.53 per day at Detroit, Michigan, effective September 25, 1972, and created in lieu **thereof, effective** September 26, 1972, a position of Stenographer, rate \$38.13 per day involving substantially the **same** duties which had theretofore been performed by the Secretary position.

(2) Ms. Audrey Rounding shall now be compensated for the difference between salary \$42.53 per day and \$38.13 per day for September 26, 1972 and each subsequent date until violation is corrected. The aforementioned rates have been adjusted to conform with National Wage Adjustments.

OPINION OF BOARD:

Prior to July 23, 1971, there were two positions **on** the Medical Department Staff at Detroit, Michigan; a Secretary position and a Stenographic-Clerk position at a lower rate.

The duties of the Secretary **position** required taking medical terminology dictation **from Carrier's** Chief Medical Officer and his **Assistant**. The Secretary shared the general office work with the **Stenographer-Clerk**, who performed regular typing **and whose** duties included office receptionist, **routine** typing of office correspondence from handwritten letter⁸ and non-medical shorthand **notes** and dictaphone.

On July 23, 1971, the Stenographer position was abolished and the Secretarial position **assumed** the work of both positions. On September 11, 1972, the Secretary position became vacant. It was advertised by bulletin, but **no** qualified bids were received.

On September 19, 1972, the Secretarial position was abolished and the Carrier reestablished the **former** Stenographic position effective September 26, 1972.

After appointment to the position, Claimant sought the difference in pay of the Stenographer position, and the Secretary position.

The Organization cites and relies, primarily, on Rule 60 and 61:

"RULE 60 -- **ADJUSTMENT** OF RATES

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.

RULE 61 -- NEW POSITIONS

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. When there are no positions of similar kind or class where the new position or positions are created the rates of pay will be fixed by negotiation and agreement between the supervising officer and the General Chairman."

The Carrier has noted that the Organization failed to file a rebuttal statement to Carrier's **ex parte** submission and has cited a number of Awards which have held that such a failure **leaves** material factual statements **uncontroverted** and undenied (**Awards** 19927, 19848, and First Division Awards 22230, 22231, **among** others). But, the Board does not feel that the cited authority disposes of the claim. We do not feel that there is a **severe** factual **dispute**. Moreover, acceptance of all material facts outlined in the Carrier's **ex parte** submission frame8 **an issue**. We do not read the cited Awards as requiring **us** to accept Carrier's **conclusionary** recitation8 as being established.

The material factual statement8 listed above are **taken from** Carrier's **ex parte** submission. In addition, we will also find the following.

Carrier advertised for a Medical Secretary in a local **news-**paper and in a trade paper, but received no applications. When no applications were received, the office procedure8 were revised **and** the Medical Officers started dictating into a dictaphone machine. We will also conclude that the Clinic Manager is in charge of the office

and not the Secretary, and that the present Claimant is not proficient in taking shorthand.

Claimant relies upon certain Awards which have interpreted agreement language quite similar to Rule 60 as not **requiring a** showing that **all** work is being performed by the new position in order to sustain a claim. See, for example, Awards 19575, 4078 and 6870. We also note that Award 4688 found very **little** difference in a Secretary's use of **shorthand** vs. typing from a mechanical device.

The **Board** has fully considered the denial Awards cited by Carrier, such as 5093, 8748, 9212 and 1784, among others, but we feel that the Awards may be read in **harmony**. In essence, determinations have been made under the factual circumstances of each record, and as we read Rules 60 and 61, we feel that such an ad hoc review is required in each case. In short, in **order to sustain** a claim, we **must** find the same class or grade of work, or the similar kind or class.

The main thrust of Carrier's defense appears to be the fact that taking dictation by shorthand has completely disappeared from the job. While **that** appears to be the case, the record **is** equally clear that it has been replaced by a dictaphone machine, and the record shows that the Claimant types from the machine and that medical terminology is used.

Noting the Awards cited above, and noting that the **Rules** refer to similar kinds of duties and the **same** class or **grade** of work, we are not able to conclude that Carrier has established that replacing of **shorthand procedures** with mechanical dictating devices has materially altered the position. Nor are we able to find anything of record to support Carrier's conclusion that it is **"...reasonable** to understand that the efficiency and productivity would drop **notice-**ably when the Medical Officers **were** required to use a dictating machine exclusively." To the contrary, absent **some** showing of record, we would find it reasonable to understand that when two or **more** people use the **same** Secretary, efficiency and productivity increases when mechanical dictating equipment is properly used.

We are not **unmindful** of Carrier's difficulty in obtaining the type of employee it sought originally, but that factor does not warrant an Agreement violation.

Finally, we note the Carrier's assertion that **"...the** Stenographer not being trained in medical terminology would have to employ the assistance of the Clinic Manager for translations and spelling of technical **words."** We feel that the above assertion

deals more with the **qualifications** of the employee; not the proper requirements of the job. **Rule 57** require8 that **positions** (not employees) shall be rated.

The qualification8 of a particular incumbent cannot control. Rather, the requirements of the position dictate the result. Substitution of mechanical dictating equipment for shorthand did not authorize a deviation from the requirements of Rule 60.

We are not unmindful of Carrier's admonition that this Board has no authority to establish a new position, or re-create an old one. But this Award does not do that. Rather, it sustains a claim for a violation of a specific Rule, and rectifies a breach of Rule 60.

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.

A W A R D

Claim**sustained**.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, **Illinois**, this 25th day of October 1974.

CARRIER MEMBERS' DISSENT TO AWARD NO. 20474 -
DOCKET NO. CL-20490 - (REFEREE SICKLES)

In the **Opinion of Board**, it is stated:

"On July 23, 1971, the Stenographer position was abolished **and** the Secretarial position assumed the work of both positions. On **September 11, 1972**, the Secretary position **became** vacant. It was advertised by bulletin, but no qualified bids were received.

"On September 19, 1972, the **Secretarial** position **was** abolished and the **Carrier** reestablished the former Stenographic position effective September 26, 1972."

It **is** further stated:

"**The** qualifications of a particular incumbent **cannot** control. Rather, the requirements of the position dictate the result. * * *."

Despite the above, the majority sustained the claim stating the Carrier violated Rule 60. Rule 60 reads:

"RULE 60 - ADJUSTMENT OF RATES

"Established position⁸ 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.*

Webster's Seventh New Collegiate **Dictionary** states:

"Stenographer - Writer of shorthand; one employed chiefly to take **and** transcribe dictation."

"Secretary - One entrusted with the secrets or confidences of a superior; Confidant; An officer of a business concern who **may** keep records of directors' **and** stockholders' **meetings**; One employed to handle correspondence and manage routine **and** detail work for a superior."

The Award is erroneous and we dissent.

H F M Braidwood
H. F. M. Braidwood

P. C. Carter
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W. B. Jones
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