

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20716  
Docket Number CL-20471

Frederick R. Blackwell, Referee

(Brotherhood of Railway and Steamship Clerks,  
( Freight Handlers, Express and Station Employees  
**PARTIES TO DISPUTE:** (  
(The Belt Railway Company of Chicago

**STATEMENT OF CLAIM:** Claim of the System **Committee** of the Brotherhood  
GL-7417, that:

1. The Carrier violated the Clerks' Agreement when it abolished  
General Clerk Position #24 and assigned the duties of the position to:

(a) **Employees** assigned to lower rated positions.

(b) To non-contract employees, namely, **Trainmasters**  
E. Wilson and R. Kurtz.

2. The Carrier shall now restore **the** General Clerk Position #24  
and compensate J. Slowinski, the occupant of Train Clerk Position #26, the  
existing differential between \$37.33 and \$39.04 (Plus subsequent wage in-  
creases). Also the regularly assigned relief clerk in the same manner and/or  
**successors** with the understanding that the **employees** filling this position on  
an overtime **basis** will be compensated at the time and one-half rate, for the  
existing differential, effective June 16, 1972 and continuing so long as the  
violation continues or until such time as corrective measures are **applied**.

3. The Carrier shall pay the time and one-half rate of \$39.04  
(plus subsequent **wage** increases) for each work day, Monday through Sunday,  
to the following **named employees** and/or successors, who were available, quali-  
fied and willing to perform the work assigned to the Trainmasters.

E. Vokral . . . . . **for** each **Sunday** and Monday  
F. Cooke . . . . . **for** each Tuesday  
J. Slowinski . . . . . **for** each Wednesday and Thursday  
R. Beilka . . . . . **for** each Friday and Saturday

**OPINION OF BOARD:** This claim will be denied in part and dismissed in part,  
because of lack of record support.

The claim is based on the allegations that agreement violations **re-**  
sulted from the abolishment of General Clerk Position #24 on June 16, 1972,  
because some of the work of the position was distributed to non-contract am-  
ployees (Trainmasters) and to a lower-rated contract position (Train Clerk  
Position #26). The Claimant was the occupant of the lower-rated position  
when the abolishment occurred.

Prior to its abolishment the duties of General Clerk Position #24 had been as follows:

"~~Examine~~ and certify work time slips of the various classifications of **employees** of the Transportation Dept., assist in the development of information for handling time claims submitted by such employees. Maintain records relating thereto. Knowledge of all pertinent provisions of applicable labor agreements required. Other clerical work as may be assigned."

The General Clerk position also handled the original presentation of claims and the time claims were only spot checked by the supervisors.

Immediately prior to the abolishment of position 824, the Carrier issued a June 12, 1972 instruction to **Trainmasters** Wilson and **Kurtz** which provided as follows:

"Effective Wed., **June 14**, 1972, all service timeslips for trainmen and enginemen and **switch-tenders** performing service in your individual territories are to be personally approved by **you**, if correct, and forwarded directly to the accounting department.

The approval and correspondence pertaining to returned timeslips, etc. should be over your signature for trainmen & switchtenders. **Time-**slips for enginemen are to be handled by you over the signature of the Road Foreman of Engines. If a **timeslip** is not correct, you are to follow through and return for correction and if portion is to be paid, arrange for such payment.

For your information, attached herewith are two copies of three different type forms previously used to decline timeslips.

Timeslips submitted for holiday and vacation payment procedures are not changed."

In these facts the parties have joined issue on whether the Carrier's actions violated Rule 1, Scope, **Rule 56**, Rating Positions, **Rule 57, Preservation** of Rates, and Rule 67, Adjustment of Rates. The Carrier specifically contends that the limited amount of work given to **position #26** was not sufficient to warrant any adjustment in its rate of pay and (2) that the work now performed by the **Trainmasters** was not contractually reserved to the Clerks.

The facts do not permit any finding of violation in respect to Rules 56 and 57. Rule 56 prohibits the transfer of rates from one position to another, while Rule 57 assures similar rates for similar work when new positions **are** established. No rate transfer is evidenced by the confronting facts and thus no violation of Rule 56 can be found. Furthermore, since an allowance of the claimed differential between position **#26** and **#24** would constitute the transfer of a rate from one position to another, **Rule 56** necessarily precludes the Board from approving this part of the claim. Similarly, no new position was established so Rule 57 cannot be said to be applicable. Rule 67 reads as follows:

"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."

The Carrier says that the Claimant's principal duties as a Crew Caller have not changed and that the work transferred to his position was not sufficient to warrant any adjustment in the rate of pay, and that, in any event, the rule requires the parties to negotiate a rate adjustment, a matter which is beyond the reach of the Board. Although the Carrier says that no higher rated work from position **#24** was assigned to position **#26**, the Carrier does not dispute that some of the work of the former position was assigned to position **#26**. This assertion, being in the nature of an affirmative defense, called for evidentiary support which the Carrier has not supplied in the record before the Board. Consequently, the record does not support this part of the Carrier's position, and to the contrary, the record facts obviously indicate that negotiation of a rate adjustment under **Rule 67** is warranted. However, the Carrier is correct in asserting that

this is a matter exclusively within the province of the parties and that the Board is not empowered to require the application of Rule 67. Award No. 19023, involving this same property. The Carrier is also correct in respect to its position regarding the **Trainmaster's** work covered by the June 14 instructions. There can be no question about the validity of the Carrier's assertion that the **Trainmasters**, as Carrier officers, have the right and responsibility to check, approve, or disapprove any time slip from crews in their territory. The delegation of some or all of this work to a clerk does not terminate the **Trainmaster's** authority to approve or disapprove claims, nor does it constitute a relinquishment of the right to the work on the part of the Carrier. Indeed, the approval or disapproval of employee time claims is by its very nature a vital function in the managerial process and thus the Carrier may freely choose who shall perform this function on its behalf. There is no showing of record that the Carrier gave up this inherent managerial right, by agreement or otherwise, so this part of the claim is also without foundation.

In view of the foregoing, the claim will be dismissed in **part** and denied in part.

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

The claim is not supported by the record.

A W A R D

The parts of the claim relating to Rules 56 and 57 and to the work performed by the **Trainmasters** is denied. The part of the claim relating to **Rule** 67 is dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

*A. W. Paulos*  
Executive Secretary

Dated at Chicago, Illinois, this 16th day of May 1975.