

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22323
Docket Number CL-21909

Herbert L. Marx, Jr., Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(**Express** and Station **Employees**
(
(Kentucky & Indiana Terminal Railroad **Company**

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood,
(GL-8292), that:

1. (a) Carrier violated the Agreement when effective Monday, June 9, 1975, it declared abolished the position of Rate and Misc. Clerk with assigned work week of **Monday through** Friday, rest days Saturday and Sunday, hours 7:00 A.M. to 3:00 P.M., and a daily rate of \$43.30; and, concurrent with the abolishment, established a so-called new position of Trainbooker with assigned work week, rest days, hours and duties the same as those of the abolished Rate and Misc. Clerk position, but with a daily rate of \$41.04.

(b) Carrier shall, because of the violation cited in (a) above, compensate Clerk **John** G. Waterberry, or his successor(s) to this position, for the amount of \$2.26 per day, beginning Monday, June 9, 1975, and continuing until the violation ceases.

2. (a) Carrier violated **the** Agreement when effective Monday, June 9, 1975, it declared abolished the position of Rate and Utility Clerk with assigned work week of Wednesday through Sunday, rest days Monday and Tuesday, hours 3:00 P.M. to 11:00 P.M., and a daily rate of **\$44.00; and,** concurrent **with** the abolishment, established a so-called new position of Trainbooker with assigned work week, rest days, hours and duties the same as those of the abolished Rate and Utility Clerk position, but with a daily rate of \$41.04.

(b) Carrier shall, because of the violation cited **in** (a) above, compensate Clerk Harry M. Brown, or his successor(s) to this position, for the **amount** of \$2.96 per day, **beginning** Monday, June 9, 1975, and continuing until the violation ceases.

3. (a) Carrier violated the Agreement when effective Monday, June 9, 1975, it declared abolished the position of **Rate** and Utility Clerk with assigned work week of Friday through Tuesday, rest days Wednesday and Thursday, hours **11:00** P.M. to 7:00 A.M., and a daily rate of \$43.30; and, concurrent with the abolishment, established a so-called new position of **Trainbooker** with assigned work week, rest days, hours and duties the **same** as those of the abolished, but with a daily rate of \$41.04.

(b) Carrier shall, because of the violation cited in (a) above, compensate Clerk Neil Procter, or his **successor(s)** to this position, for the amount of \$2.26 per day, beginning Friday, June 13, 1975, **and** continuing until the violation ceases.

4. (a) Carrier violated the Agreement when effective Monday, June 9, 1975, it declared abolished the position of Relief Pate-Utility, Rate & Asst. Chief Pate Clerk which performed rest day relief, on the Rate and Clerk position occupied by Clerk John G. Waterberry on Sunday, the Pate and Utility Clerk position occupied by Clerk Harry M. **Brown** on Monday and Tuesday, and **on** the position of Asst. Chief Rate Clerk on Wednesday and Thursday; and, concurrent with the abolishment, established a so-called new position of Relief **Trainbooker** and Assistant Chief Clerk, relieving the same **employees**, on the same positions, on the same respective days of each week, performing the same duties as before the **abolishments**, but with the positions having changed titles and reduced **rates that** produced \$8.18 less compensation per week.

(b) Carrier shall, because of the violation cited in (a) above, compensate Clerk Gill **M.** Finley, or his successor(s) to this position, for the **amount** of \$8.18 per week, beginning Monday, **June** 9, 1975, and continuing until the violation ceases.

OPINION OF BOARD: **On** June 2, 1975, Carrier issued a bulletin abolishing eleven positions, including those of Rate and Miscellaneous Clerk, Rate **and** Utility Clerk, and Relief Pate-Utility, Pate and Assistant Chief **Rate** Clerk. Simultaneously, the Carrier advertised what it listed as "new positions" to replace most of the abolished positions. Three of the Claimants, **formerly** assigned to positions as **Rate** and Miscellaneous Clerk and Pate and Utility Clerk, took on the newly bulletined lower-rated positions of Trainbooker; one of the Claimants, formerly holding the position of Relief Pate-Utility, Pate and Assistant Chief Rate Clerk, took on the

newly bulletined lower-rated position of Relief Trainbooker and Assistant Chief Clerk.

The Claimants seek increases in their pay rates on their new positions to the pay rates which they formerly enjoyed, and the Organization claims violation of Rules 54, 56 and 70 is involved.

The pertinent rules read as follows:

RULE 54 -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 the service required, the compensation for such position will be subject to adjustment by mutual agreement with the duly accredited representative.

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 56 - 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 Director of Labor Relations and the General Chairman."

RULE 70 - ESTABLISHED RATES

"Rates of pay now in effect and established pursuant to agreements between the parties hereto shall continue in effect until changed as provided in existing wage agreements, by mutual agreement, or in accordance with the provisions of the Railway Labor Act, as amended."

As to Rule 54, the Organization claims that the new jobs are "relatively the same class or grade of work," and the Carrier's action has the "effect of reducing the rate of pay."

The Board finds insufficient merit or proof in this argument. The new positions do not include rate work, while rate work was an integral part **of** the former positions. This is true whether or not the rate work gradually diminished over the years as part of the **former** positions in actual practice.

This brings us to Rule 56. **"Trainbooker"** is clearly a new position, a finding to which the Carrier readily agrees and which the Organization, in its claim on the property, uses as at least part of its claim.

The Carrier argues that the wages for the new positions were properly **set** as directed in the first **sentence** of Rule 56; that is, "in conformity with the wages for positions of similar kind or class in the seniority district where created." In its letter to the Organization on September 26, 1975, and throughout the processing of the claim to the Board, the Carrier defines its position on this point. The September 16, 1975, letter, states:

"The record clearly supports that the wages for the new positions of Trainbooker are in conformity with the similar position of Route Clerk, which rate was established for the new Trainbooker positions."

In addressing this particular point, the Organization argues that the Trainbooker position not only includes its own skills but also that of Route Clerk (or Route and Bill Clerk, as it may also be **called**).

The parties, obviously have found no **common** ground as to the "positions of similar kind or class" to use as the proper wage rate for the Trainbooker positions. Under these circumstances, **Rule 56** makes specific provision for resolution of the dispute: **"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 Director of Labor Relations and the General Chairman."

The Board will therefore **remand** this dispute to the parties for prompt resolution to determine if they can agree upon a position of similar kind or class on which to base the wage rate for the Trainbooker positions; and, if such agreement is not reached, to fix such rates of pay by negotiation and agreement between the Director of Labor Relations and the General Chairman, as directed by Rule 56. Claims as to violations of other portions of the Agreement will be denied.

Aside from the merits of the dispute, the Carrier sought to prove procedural irregularities. The Board finds that these arguments are ill-founded, and the claim is in good order before the Board.

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 dispute is remanded to the parties as to implementation of Rule 56; and that the Agreement was not **otherwise** violated.

A W A R D

Claim sustained as to Rule 56 only and is remanded to the parties as per the Opinion and Findings.

NATIONAL RAILROAD **ADJUSTMENT** BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 28th day of February 1979.