

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

**Award Number 23021
Docket Number CL-23085**

Martin F. Scheinman, Referee

PARTIES TO DISPUTE:

(Brotherhood of Railway, Airline and
Steamship Clerks, Freight Handlers,
Express and Station Employees
(The Baltimore and Ohio Railroad Company

STATEMENT OF CLAIM:

"Claim of the System Committee of the
Brotherhood (GL-8849) that:

(1) Carrier violated the Agreement between the parties when, on December 7, 1976, it materially changed the duties of Car Shop Clerk, position C-28 at Willard, Ohio, and refused to adjust the rate of pay attached to the position, and

(2) Because of such impropriety, Carrier shall be required effective December 7, 1976, to increase the rate of pay of Car Shop Clerk, position C-28, incumbent c. J. Keller had her successors on the position, in the amount of \$3.27 each subsequent work-date."

OPINION OF BOARD: Under date of October 12, 1976, Carrier in Bulletin No. 47 advertised the position in dispute here.

It stated:

"1. car Clerk, Car Shop Willard, Ohio - Job C-28 8:00 A.M. to 4:30 P.M. 30 minute lunch, Rate \$50.75 Rest Days Saturday and Sunday Vice A. Miller."

The successful applicant for Car Clerk position C-28, as described in Bulletin No. 47, was removed from the position after 30 working days account disqualification. Carrier again advertised the position under date of December 7th, 1976, in Bulletin No. 56. Bulletin No. 56 stated:

"1. car Clerk, car Shop Willard, Ohio, Job C-28 8:00 A.M.-4:30 P.M. 30 minutes lunch, Rate \$50.75 Rest days Saturday - Sunday Vice A. Miller Must be qualified stenographer, have knowledge of car department records, reports and files.. Applicant send bids to R. Ruckman, Car Shop Willard."

The Organization claims that Carrier violated the Agreement when it changed the duties of Car Shop Clerk, Position C-28, without adjusting the rate of pay attached to the position. The Employees argue that Rules 16, 17 and 20 have been violated.

"RULE 16

Preservation of Rates.

(a) Employees temporarily assigned to higher rated positions, shall receive the higher rates for four (4) hours' work or less, and if held on such positions in excess of four (4) hours, a minimum of eight (8) hours at the higher rate. Employees temporarily assigned to lower rated positions shall not have their rates reduced.

(b) A 'temporary assignment' contemplates the fulfillment of the duties and responsibilities of the position during the time occupied, whether the regular occupant of the position is absent or whether the temporary assignee does the work irrespective of the presence of the regular employee. Assisting a higher rated employee due to a temporary increase in the volume of work does not constitute a temporary assignment."

"RULE 17

Change in Duties and Positions.

When new positions are created, duties of existing positions materially changed or duties of existing positions changed from one class to another, compensation will be fixed in conformity with the same class and character of positions as are specified in the wage scale for the portion of the division on which located, and the rules will apply to employees filling such positions; provided, the entering of employees in the positions occupied in the service or changing their classification or work shall not operate to establish a less favorable rate of pay or condition of employment than is herein established. New rates, of pay to be effective from date first taken up by the representative of the employees.

(It is understood that when increases are granted under the terms of this paragraph to certain positions on account of increased duties, such increases will be eliminated when the increased duties for which the increase was granted are discontinued.)"

"RULE 20

Rates.

Established positions shall not be discontinued and new ones created covering relatively the same class of work which will result in reducing rates of pay or evade the application of these rules."

The Organization asks that Claimant, C. J. Keller, the incumbent of Position C-28, and her successors to that position receive \$3.27 for each work date in the position.

Carrier, on the other hand, insists that the claim is without merit. It maintains that the job was unchanged as the work assigned to the position remained the same. Specifically, Carrier argues that the incumbent of Position C-28 was, at no time, called upon to perform stenographic duties. It asserts that the word stenographer was included in Bulletin No. 56 only to assure that the successful applicant was a competent typist.

The Organization cited Rules 16 and 20 in its handling of the property as well as in its submission to this Board. Rule 16, Preservation of Rates, addresses the situation where there is a temporary assignment to a higher rated position. The facts here have nothing to do with a temporary assignment. As such, Rule 16 is inapplicable. Similarly, Rule 20 has no application to the facts presented. It addresses the situation where a position is discontinued or where the rate of a position is reduced. Neither of these contingencies arise in this dispute.

Thus, Rule 17, Changes in Duties and New Positions, is the applicable rule. It addresses the situation alleged here - that an existing position was materially changed.

A review of evidence presented establishes that Carrier did violate Rule 17. We are convinced, regardless of Carrier's motive for placing the requirement into Bulletin No. 56, that the requirement of the applicant be qualified as a stenographer materially changed the duties of Position C-28. After all, the skills required of a stenographer are higher than those of a typist. A stenographer specializes in dictation. It is generally accepted that those who have skills are paid a higher rate of pay.

The fact that the incumbent of the position did not actually perform stenographer tasks is irrelevant. An applicant had to possess the requisite skill and expertise of a stenographer. In short, if the Bulletin states that the applicant must be qualified as a stenographer, the position must be rated as a stenographer position.

As to the appropriate remedy, Rule 17 specifies that an employee subject to such changes and added duties is to be paid a rate no less favorable than that established for *such* work at the division on which located. Here, the relevant portion of the division is the Willard Area. The evidence established that two positions perform stenographer work in that area: Position No. 27 rated at \$57.48 and Position No. 40 rated at \$54.02. The Employee acknowledges that considerably more work is prevalent on Position No. 27. Therefore, it argued that Position No. 40 parallels C-28.

Position No. 40 is rated at \$3.27 more per day than C-28. Under the plain meaning of Rule 17, this is the rate that the Car Shop Clerk position should be set at.

Carrier also argued that there is no valid claim after September 30th, 1977, because that was the last day that Claimant was employed by Carrier. In its view, the Organization's claim for Claimant or "her successors on that position" is not in compliance with the requirement that a claim be submitted on behalf of the employee involved (Rule 48a). This argument was answered in N.D.C. #19. There, it was decided that a claim for successors of named Claimants is not barred. Thus, the form of the Organization's claim is appropriate.

Thus, we will sustain the claim as presented.

One final point. We feel constrained to note that Rule 17 provides that where increases are granted on account of increased duties - such as is the case here - that such increases "will be eliminated when the increased duties for which the increase was granted are discontinued." That is, should Carrier determine that stenographic skills are not needed in this position, it may readvertise the position as it previously existed, without added duties. In that case, the rate for the position would revert back to the rate, established by Carrier, for a typist position.

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 Employee involved in this dispute are respectively Carrier and Employee 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

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That the Agreement was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 17th day of October 1980.