Award Number 236
Docket Number CL-210

NATIONAL RAILROAD ADJUSTMENT BOARD

Third Division

Lloyd K. Garrison, Referee

PARTIES TO DISPUTE:
BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES
THE NEW YORK CENTRAL RAILROAD—BUFFALO AND EAST

DISPUTE.—

"Claim for restoration of position of Head Clerk at Carroll Street freight station, Buffalo, N. Y., rate $154.76 per month, discontinued as of July 14, 1932, and the placing of Mr. J. C. Dallas on the position together with reimbursement for his wage loss."

FINDINGS.—The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds 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.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

The parties to said dispute were given due notice of hearing thereon.

As a result of a deadlock, Lloyd K. Garrison was called in as Referee to sit with the Division as a member thereof.

There is in existence an agreement between the parties, effective September 1, 1922.

The parties have jointly certified the following statement of facts, and the Third Division so finds:

"The office forces at Carroll Street and Louisiana Street freight stations, Buffalo, were consolidated in September 1928. Prior thereto, the claim work at each station was handled by the following employees:

"*Carroll Street.*—G. Pettigrew, Clerk, $127.20 per month.

"*Louisiana Street.*—J. C. Dallas, Head Clerk, $154.76 per month.
J. P. Will, Clerk, $148.40 per month.

"After the consolidation, the claim work was handled at Carroll Street by the following employees:

"J. C. Dallas, Head Clerk, $154.76 per month.

"J. P. Will, Clerk, $148.40 per month.

"In August 1930 the Central Billing Bureau, Buffalo, was established and the above mentioned position of Clerk at rate of $148.40 per month was transferred to that Bureau.

"In July 1932 the position of Head Clerk at rate of $154.76 per month was discontinued and the claim work was absorbed by F. S. Hinkley, clerk handling tracing, at rate of $126.14 per month, and J. P. Will, clerk handling coal, at rate of $127.20 per month."

The employees have submitted figures showing the number of claims per month handled by the employees doing claim work from September 1928 to December 1933. These figures show that during the four months, September to December 1928 when the force at Carroll Street consisted of the head clerk and one claim clerk, there were an average of 640 claims per month per employee. During the seven months, January to July 1930, the average had dropped to 378 per month per employee. During the seven months period of January to July 1932, when the only employee was the head clerk, the average dropped to 337 per month. It was at the conclusion of this last period that

the head clerk's position was abolished and the work absorbed by the tracing clerk and the coal clerk. If we take the 1928 figures as representing the average number of claims per month which would fill one employee's time, the 1932 figures (just before the abolition of the head clerk's position) would indicate that he then had only enough work to occupy 52% of his time. If we take a longer period as the base, say, September 1928 through July 1930, we get an average per month per employee of 532 claims, and using that basis, the 337 average during the 1932 period would be 62% instead of 52%.

The carrier contends that the reduction was actually greater than the figures would indicate because prior to the abolition of the head clerk's position, certain simplifications had been introduced in the matter of forms, etc., considerably lessening the amount of time involved per claim. On the other hand, the employees contend that from August 1930, after the shift of the clerk to the Central Billing Bureau, the work remaining at Carroll Street consisted exclusively of claims on inbound freight instead of both inbound and outbound as formerly, and that the work on the inbound claims was much more time-consuming than that on the outbound. A study made by the carrier in June 1935 showed that the claim work was then averaging approximately six hours per day divided between the tracing clerk and the coal clerk, or 75% of one man's time, from which we think that it is proper to infer that the figures above arrived at for the period of 1932, and amounting to somewhere between 52% and 62% of one man's time, are not far from the truth.

The question we have then to decide is this: When the work of a given employee's position has so fallen off that it is occupying something over half of his time, is there any violation of the agreement in abolishing the position and assigning the remainder of his work to lower paid employees? The employees rely upon the following rules of the agreement and contend that they have been violated:

"RULE 38

"Employees temporarily or permanently assigned to higher rated positions shall receive the higher rates while occupying such positions; employees temporarily assigned to lower rated positions shall not have their rates reduced.

"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.

"This will not apply in case of sickness or vacation when absent employee is paid during such absence."

RULE 43

"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 rate of pay or evading the application of these rules."

In determining the proper application of these rules, it may be helpful to consider a number of possible situations, in each of which it will be assumed that the employees are paid on a monthly basis, as in this case, and not at an hourly rate.

1. An employee is working full time at a given job, but the carrier either reclassifies his work at a lower rate, or assigns the work to a lower rated employee. Clearly, Rule 43 will be violated.

2. An employee's work has fallen off slightly so that he is devoting not quite full time to his duties. We suppose there can be no doubt that, if the position was reclassified at a lower rate, Rule 43 would be violated. We suppose there can also be no doubt that, if the work was assigned to a lower rated employee, the rule would be violated, even if the lower rated employe performed a few lower rated duties to fill in the chinks of time resulting from the slight diminution in volume of the higher rated work.

3. But suppose the work has fallen off rather substantially in volume so as to occupy something over half of the higher rated employe's time, as in this

case. Is the difference one of substance, or not? Would the carrier be justified, without the consent of the employes, in reclassifying the employe and paying him at a lower rate? We should suppose that the answer would be no and that Rule 43 would prevent such action, because otherwise, whenever a temporary falling off of business resulted in a diminished volume of work in various positions, the carrier would be able to reclassify positions and destroy the rate structure at will, which clearly it was the purpose of Rule 43 to prevent.

4. Taking the same facts as in case 3, and assuming, for the sake of argument, that the employe's duties consumed 55% of his time, and assuming further that the carrier wished to keep him busy, and therefore had him absorb, in the other 45% of his time, duties of a lower rated position, would the carrier then be entitled to reclassify his position and pay him at the lower rate of the absorbed duties? We should think not, but would assume that, since the major portion of his time and responsibilities were devoted to the work for which his position had been originally created, he would still be performing relatively the same class of work within the meaning of Rule 43, despite the absorption of a certain amount of lower rated duties. If this is true, would the case be altered if the carrier abolished his position and assigned his higher rated duties to a lower rated employe whose time was sufficiently slack to enable him to absorb these duties? We should think not, for the net result is precisely the same. The predominant duties and responsibilities of the lower rated employe would be those of the position which had been abolished, and would, we think, be fairly considered as representing relatively the same class of work within the meaning of Rule 43. These conclusions are strengthened by Award No. 147, Docket CL–130, January 20, 1936, rendered by this Division. In this case a janitor was given additional duties, corresponding to those of a baggage helper, which was a higher rated position. The case did not involve the abolition of a previously existing baggage helper position, and hence the claim was made, not under Rule 43, but under Rule 38, above. The employes claimed that the janitor had been assigned to a higher rated position within the meaning of Rule 38 and to support the contention argued that employes should be classified "in accordance with the majority of the work regularly performed." The Board, with Wm. H. Spencer sitting as Referee, stated in its conclusion that:

> "The carrier did not deny that this is a fair and reasonable basis for classification. In the application of this test, however, the difference in the relative importance of the two classes of duties, as well as the difference in the amount of time spent on each, should be weighed.
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> "It is the conclusion of the Division that, considering the relative difference in the importance of the duties performed and the amount of time spent on each class of duties, Mr. Flynn is performing the duties of a baggage helper within the meaning of Rule 1 of the Agreement between the parties."

Upon the principle announced in this case, we would conclude that, if the head clerk in the case now before the Board had been assigned lower rated duties to fill up the balance of his time, he would still have to be classified and paid as a head clerk. By the same token, if a lower rated employe working, we will say, 45% of the normal full time, had been assigned the duties of the head clerk, amounting to 55% of full time, the lower rated employe would then be performing the work of the head clerk, and the discontinuance of the former's position would be in violation of Rule 43.

5. If we accept the proposition in case 4, can it make any difference in the result that the head clerk's duties (and by reference to his duties, we mean his claim work, because his supervisory functions appear to have been minor) were assigned not to one lower rated employe, but divided between two lower rated employes? We should think not, because the net result is precisely the same. If it is a violation of Rule 43 to discontinue the head clerk's position and assign the duties to one lower rated employe who thereafter would be performing relatively the same class of work, it would be a curious result which would permit the higher rated position to be discontinued by distributing the duties among a number of lower rated employes. Let us suppose that the head clerk had been working full time but that a half dozen subordinates were working ¾ or ⅝ of full time. Would it be permissible to discontinue the head clerk's position and spread his work evenly over the half dozen? Surely, that would be a violation of the clear purpose of Rule 43. Would not the

same result follow if the head clerk were working 5% of full time? We should think so. And under the principle of Award No. 147, above, the same result would follow if he were busy a majority of his time.

In thus arriving at the conclusion that what was done here amounted to a violation of Rule 43, we recognize fully the difficulties inherent in the decision. It may be said that the principle of classification adopted in Award No. 147 and in the above reasoning is artificial and cannot be found in the agreement. But the agreement classifies positions, and the business of interpretation is to say what they mean in the changing factual situations which develop in practice. Certainly, it would be altogether artificial and obviously in violation of the purpose of Rule 43 to say that an employe who is spending 4/5 of his time at higher rated work and 1/5 at lower rated work can be reclassified and paid at a lower rate. Once we admit that, and we can hardly fail to admit it, we cannot escape considering the problem of degree and of how far it is reasonable to go in order to say that the position has altogether changed from its original character. The majority test announced in Award No. 147 seems to us to be the common sense solution. It will be noted that the test is not purely mechanical, not purely a time-clock formula, for the amount of time spent is not the sole factor to be considered, for the relative importance of the two classes of duties must also be considered, and weighed.

Clearly, in the present case, there is a great difference in the importance of the duties of a claim clerk, or a head claim clerk on the one hand, and a coal clerk, or a tracing clerk on the other hand. The differentials in the rates of pay are evidence enough of the difference. And while the record is not altogether clear as to the precise duties involved in claim work, it is clear that the duties of both the coal clerk and the tracing clerk involve routine functions and very little judgment or responsibility, whereas the evidence indicates that in claim work the elements of judgment and responsibility play at least some part, and certainly more so than in the other positions. There is all the more reason, then, for holding that when an employe is devoting something over half his time to claim work, and, in addition, is charged with certain responsibilities for the faithful performance of the work which have entered into and affected the rate of pay, the position cannot be discontinued and parceled out among lower rated employes without violating the whole purpose of Rule 43.

It may be said that the result is unfair to the carrier because if, instead of discontinuing the employe in question, it had kept him on the payroll and filled up his spare time by assigning a certain quantity of lower paid work to him, the carrier would then not be getting all that it was paying for at the higher rate. But the present situation is just as unfair to the employes, for the higher rated position is no longer available for promotion purposes, and the carrier is getting the claim work done at a lower rate than it originally bargained for. Complete equity cannot be done to either side, and this is always the result when business falls off. Rule 43 was evidently designed to place a check on the downward revision of wage rates by the carrier and to introduce into the wage structure a certain stability. If in periods of reduced business, this stability is expensive to the carrier, it may also be said that periods of rising business are expensive to the employes, for they cannot adjust their wage rates upward except by negotiation. Both sides have given up something in entering into the agreement. Occasionally one must suffer, and occasionally the other.

The question remains as to what should now be done. The employes do not question the absorption of the supervisory duties of the head clerk by higher rated employes and are not contesting the carrier's contention that there is not the slightest need for recreating these duties. We think the carrier would have been within its rights under the circumstances of this case in reclassifying the head clerk after the elimination of his supervisory functions as a claim clerk at the rate of $148.40 per month, which was the rate of the claim clerk under him, who was assigned to the Central Billing Bureau. What the carrier should not have done, taking into account the importance of the claim work and the fact that it occupied a majority of the time of the employee in question, was to discontinue the employe's work and assign it over to lower rated employes.

This decision, which calls for the restoration of the position of Claim Clerk at Carroll Street, does not of course prevent the abolition of that position

under proper circumstances, nor does it prevent the absorption of the work by employes of the same classification and rate of pay, or of a higher classification and rate of pay. Nor does it amount to saying that when work dwindles to less than half of a man's time who is paid on a monthly basis, it cannot be absorbed by lower rated employes.

AWARD

The position of Claim Clerk at the Carroll Street Freight Station, Buffalo, New York, at the rate of $148.40 per month, should be restored, and Mr. J. C. Dallas should be placed in the position and reimbursed for his wage loss from July 14, 1932 as of which date his position of Head Clerk was discontinued, and as of which date he should have been retained as a Claim Clerk.

By Order of Third Division:

NATIONAL RAILROAD ADJUSTMENT BOARD.

Attest:

H. A. JOHNSON, *Secretary.*

Dated at Chicago, Illinois, this 9th day of April 1936.