

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES
GULF, COLORADO AND SANTA FE RAILWAY COMPANY**

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that Carrier violated the rules of the Clerks' Agreement and provisions of Memorandum of Understanding dated December 15, 1932 when on January 1, 1933 it transferred duties and rates between Positions Nos. 12 and 15, Master Mechanic's Office, Temple, Texas.

"Claim that Miss Artie L. Smith shall now be paid the difference between the daily rates of \$5.76 and \$6.36 (\$5.36 and \$5.96 prior to August 1, 1937) for each day she has worked retroactive to January 1, 1933."

EMPLOYES' STATEMENT OF FACTS: "On or about January 1, 1933 certain phases of the timekeeping work theretofore performed in the Division Master Mechanic's Offices were transferred to and centralized in the General Accounting Office at Galveston, Texas. This change in accounting procedure resulted in the abolishment of all established clerical positions in the Master Mechanic's office at Temple and creation of two new positions identified by pay roll Nos. 12 and 15. Bulletin advertising Position No. 12 for bids read:

'3. Vacancy for clerk in Master Mechanic's office in Temple, basic rate \$5.96 per day. Principal duties will consist of handling such reports as 1160, 1161, 2046, 2514, 2530, 2533, pass records, stationery, and assist on distribution Form 1254-A and clock cards. Must be able to operate typewriter reasonably well.'

"Bulletin advertising position identified on the pay roll as 15 read:

'4. Vacancy in Master Mechanic's office at Temple, for clerk, basic rate \$5.36 per day. Principal duties will consist of handling A. R. A. car repair billing and related work, reports such as Forms 1155, 1196, 94, MS7, 1518, 2524, and assist in handling other reports in the office. Must be able to operate a typewriter reasonably well.'

"Miss Artie L. Smith (seniority date 12-14-08) was assigned to Position No. 15, Bulletin No. 4. Mr. John Ebner (seniority date 8-12-12) was assigned to Position No. 12, Bulletin No. 3.

"All of the work described in the Bulletin assignments to positions 12 and 15 had previously existed in the office. While the relocation of certain phases of the timekeeping work and change in method of performing that which remained at Temple necessitated a minor redistribution of work the preponderating duties assigned were those which had theretofore governed the classification and rate of pay on the two positions. Proof that the bulletined reassignment of duties was of minor consequence, insofar as it affected the grounds for rerating either position was concerned, is evidenced by fact the Committee for the Organization then representing the employees accepted the rates as equitable.

"The Carrier submits that the arrangement throughout the five and one-half year period redounded to the personal benefit of Miss Smith in that it permitted her to remain in the office of her choice at an increase in rate of pay over her former salary and that there was nothing in the arrangement that was in violation of any of the provisions of the Clerks' Agreement dated effective December 1, 1929, nor in the special Memorandum of Agreement dated December 17, 1932, Carrier's Exhibit A.

"In passing, we note that even if the claim were well founded it could not be sustained for any period earlier than date of first presentment. See Awards 693, 696, 788, 851 and 932 of the Third Division, also Awards 2730, 2731, 2748, 2871, 3064, 3065, 3105, 3141, 3351, 3385, 3498, 3604, 4007, 4056, 4199 and 4255 of the First Division."

There is in evidence an agreement between the parties bearing effective date of December 1, 1929.

OPINION OF BOARD: Based upon all the facts and circumstances of this particular case, the Board is not disposed to disturb the action of the carrier.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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 action of the carrier will not be disturbed.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 30th day of September, 1940.