Award No. 1326
Docket No. CL-1327

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Herbert B. Rudolph, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, (COAST LINES)

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that carrier violated the rules of the Clerks' Agreement when on February 1, 1936 it arbitrarily reduced the rate of pay for position of PBX Operator, Los Angeles, General Office, occupied by Miss Garland Powers $18.20 per month; and

"Claim that the proper rate of $140.17 shall now be reestablished for position occupied by Miss Powers and that she and any other employes who have occupied the position since February 1, 1936 be paid the difference between the monthly rates of $111.77 and $129.97 for the period from February 1, 1936 to August 1, 1937 and the difference between the monthly rates $121.97 and $140.17 for the period from August 1, 1937 forward."

EMPLOYES' STATEMENT OF FACTS: "Prior to December 1925 there were two PBX Boards in operation at Los Angeles. One located in the General Office Building at 6th and Main Streets and the second in the Freight Station located at 2nd and Santa Fe Streets, approximately two miles apart. The rates paid employes operating these facilities were as follows:

PBX Board located General Office Building:

PBX Operator (Maude Riley)	Rate $116.28 per month
Asst. PBX Operator	" 85.00 " "

PBX Board Located at the Freight Station:

PBX Operator (Fannie Silverman)	Rate $ 4.56 per day

"In the month of December 1925, the two PBX Boards were consolidated and located in the General Office Building. Miss Silverman being the older in point of service was designated as senior PBX Operator in charge of the Board and given the rate of $120.00 per month, while Miss Riley, who had theretofore been head of the PBX Board in the General Office Building was continued on the consolidated Board at her former rate of pay of $116.28 per month.

"By agreement with the company union the classification of Miss Silverman's position was changed to Chief PBX Operator on January 1, 1933, and her position excepted from all the rules of the Clerks' Agreement. Rates mentioned above were continued in effect with increases in 1927 and 1929, at which time positions on the consolidated PBX Board carried the following rates:

amount of supervision and required a much greater degree of capability and responsibility.

"The Carrier maintains that the employes are reading into Section 6 of Article XII of the Agreemnt, reading:

> '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.'

purposes that never were contemplated and that the Carrier did not violate that article either in intention or in fact.

"There are several elements lacking for the application of Section 6 of Article XII. The work is not 'relatively the same class of work'; for substantial and important supervisory duties were not 'covered' by the newly created position. Further, purpose to reduce rate of pay, or to evade application of the rules, must be **the purpose** of the Carrier. **The purpose** was to maintain positions needed to operate the Board properly. There was no purpose to evade any rule; but the effort was to apply Section 5 of Article XII, that is, to rate the new job in accord with positions of similar kind or class in the seniority district. The organization does not challenge that this was completely accomplished, but asks in effect that the rate for the position in question be fixed by some other measure than the one fixed in its agreement."

OPINION OF BOARD: On February 1, 1936, the carrier abolished the position of PBX Operator No. 15, carrying a rate of pay of $140.17 per month, and simultaneously therewith established the position of PBX Operator No. 23, carrying a rate of pay of $121.97 per month. Article XII, Section 6, of the current agreement between the parties provides as follows:

> "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."

The employes contend that this provision of the agreement was violated when the old position of PBX operator was abolished and the new position created.

The question presented is purely one of fact. Under the rule the fact question to be determined is whether the new position, which was established, covered "relatively the same class of work" as the old position which was abolished.

The facts disclose that in December 1925 three PBX boards were operated by the carrier at Los Angeles, one of which was located in the general office building, one in the local freight office, and one in the city ticket office. On this date these three PBX boards were combined in the general office building and one Fannie Silverman was assigned to the position of Senior PBX operator, which carried a salary of $120.00 per month; Maude Riley was assigned to position No. 15, which position at that time carried a salary of $116.28 per month, which was the salary this employe had received before the three boards were combined. Subsequently this salary was increased to $129.97 per month, and on October 1, 1937, by virtue of the National Wage Mediation Agreement an increase of $10.20 per month was added. Three other positions on the Board each carried a rate of $100.00 per month. On January 1, 1933, Miss Silverman was designated as Chief Operator, and excepted from the agreement existing between the employes and the carrier, leaving Miss Riley as the Senior PBX operator covred by the agreement. On February 1, 1936, Miss Riley resigned her position and it was at this time that the carrier abolished the position then occupied by Miss Riley and created the new position carrying the lower rate.

The record discloses without dispute that both the old and the new positions were primarily concerned with the operation of the PBX board. Both positions were assigned the same hours at the PBX board, and it is clear that the chief function of both positions was the operation of the board. In view of this undisputed situation, we are of the opinion that the burden is cast upon the carrier to distinguish the new position from the old, and to show that it does not perform "relatively the same class of work." The carrier in attempting to distinguish the work of the positions contends that Miss Riley, the occupant of the old position, performed certain supervisory duties which were not assigned to the new position. This contention is supported simply by the statement of the carrier. It is not shown wherein these alleged duties differ from the duties of any Senior PBX operator in the absence of a chief operator. Miss Powers, who was entitled to assume the position vacated by Miss Riley had this position not been vacated, has stated:

> "When Miss Silverman was absent from the Board during her lunch period, or at any other time, such handling of the difficult calls was performed by Miss Maude Riley, the senior P. B. X. Board operator on duty until her retirement on February 1, 1936 and subsequent to her retirement I, being the senior operator, assumed such duties.
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> "Following Miss Riley's retirement I assumed her position in seniority order and continued to function in the same capacity as she."

This statement is corroborated by a Miss Peal, who was one of the PBX operators and who succeeded Miss Powers.

The carrier has objected to the statements of Miss Powers and Miss Peal on the ground that they were in existence at the time of the original submission and not made a part of that submission. These statements were submitted at the oral hearing on this docket and in response to the claim of the carrier that Miss Riley was performing supervisory duties different from that of the Senior PBX operator after Miss Riley's resignation. We are of the opinion, therefore, that the statements are properly a part of the record and subject to our consideration. The carrier has not been prejudiced because of the failure to incorporate these statements in the original submission by reason of the fact that opportunity has been afforded the carrier to submit evidence to refute the statements, as indicated by the submission of a later statement from Miss Peal. In this statement Miss Peal states that she is "perfectly satisfied with conditions in the office," but she fails to contradict or deny the facts set forth in her prior statement.

No useful purpose will be served by a further discussion of this record. Quite obviously, it is not an easy task to determine disputed questions of fact in a proceeding such as this. However, after a consideration of the whole record, we are unable to conclude that the carrier has shown the work of the new position differs materially from that of the old. We are of the opinion that there has been a violation of Article XII, Section 6, of the agreement. Section 5 of Article XII, which relates to the wages for new positions, is not applicable where, as here, an established position is abolished and a new position "covering the same class of work" is established.

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 employes involved in this dispute are respectively carrier and employes 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 there is shown a violation of Article XII, Section 6, of the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 10th day of January, 1941.