

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

George E. Bushnell, Referee

PARTIES TO DISPUTE:

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

MIDLAND VALLEY RAILROAD COMPANY

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

(1) Carrier violated and continues to violate the Clerks' Agreement by failing to bulletin position of Maintenance of Way Accountant, \$160.20 per month, when position was vacated through promotion of Clerk T. F. Kilcoyne, and,

(2) That Clerk C. F. Robinson be allowed compensation for difference between rate paid of \$4.87 per day and the rate of \$160.20 per month for all time worked subsequent to September 12, 1938."

EMPLOYEES' STATEMENT OF FACTS: "Mr. T. F. Kilcoyne was prior to September 1, 1938, the regularly assigned incumbent of position titled 'Maintenance of Way Accountant,' General Offices, Muskogee, Oklahoma, rate of pay \$160.20.

"The duties which constituted the substance of that position and which governed the classification and rate of pay were as follows:

1. Checking and rendition of Transportation Department bills and vouchers, including the typing of such bills and vouchers;
2. Checking and rendition of tie records and reports;
3. Checking and rendition of ballast records and reports;
4. Rendition of statements covering joint utilities expenses;
5. Handling reports and accounts incident to Team Contracts;
6. Handling correspondence relating to freight claims and live stock claims and filing of such correspondence;
7. Checking and preparing requisitions for Station and Operating Department Supplies;
8. Extension of miles from Private Line Car Record Book;
9. Rendition of Statement incident to operation of joint stations.

"On September 1, 1938, Mr. Kilcoyne was promoted to an excepted position, thereby creating a vacancy on said position of Maintenance of Way Accountant.

positions, bulletins were posted in some cases in the Operating Department office as information to all concerned, although the agreement did not require that any bulletins be posted except as provided by Rule 8. In the case covered by this claim, however, as hereinbefore explained, there was no one affected by the discontinuance of the position of Maintenance of Way Accountant after the occupant gave it up.

"Note. As a result of the negotiations for a new Clerks' agreement, which became effective July 16, 1940, there was incorporated therein (Rule 19-a) a provision that proposed reductions in force would be bulletined 6 days in advance, but this provision did not become effective until July 16, 1940, and was not in effect at the time of this claim. It is mentioned as further evidence that the agreement prior to July 16, 1940, did not require such bulletin.

"Even if the position of Maintenance of Way Accountant had not been discontinued, and if it had been advertised by bulletin, Claimant C. F. Robinson was not the senior employee, nor was he qualified to perform the duties thereof. Forty to fifty per cent of the work represented typing. That alone would have disqualified C. F. Robinson, who was not a typist and who has made no contention that he could perform that work. To be entitled to demand a bulletined position an employee under Rule 4 must not only have seniority (which C. F. Robinson did not have), but he must also have sufficient fitness and ability, the highest officer in the department to be the judge as provided by the rule. Therefore, Robinson had neither the seniority nor the fitness and ability.

"But all of this has nothing to do with the case as the position was not bulletined, and it ceased to exist August 31, 1938, after it was voluntarily vacated, and therefore there can be no point to an argument as to who should be the occupant of a position which does not exist.

"Claimant C. F. Robinson has been paid in full for the regularly assigned position which he bid in. It is not contended that he performed the duties of the Maintenance of Way Accountant's position, and he has no right to claim compensation for work not done. There has been no showing that C. F. Robinson has been adversely affected in the slightest degree.

"There is no merit in the claim and it should be denied."

OPINION OF BOARD: The employees claim that the position of Maintenance of Way Accountant was not in fact abolished but that "many of the duties or much of the work of the position" remained to be performed after the promotion of its former occupant, Clerk T. F. Kilcoyne and "that such work was assigned to two positions not covered by the current agreement." It is contended that a vacancy existed in the position on September 1, 1938, which should have been bulletined. Clerk C. F. Robinson seeks compensation for the difference between his rate of \$4.87 per day and the rate of \$160.20 per month, formerly paid Kilcoyne, for all time worked by Robinson subsequent to September 12, 1938.

The carrier has submitted a breakdown of the 194 hours of time Kilcoyne devoted to the duties of the position of Maintenance of Way Accountant during the month of June, 1938, prior to its abolishment. The carrier further shows how the work of this position was divided during August, 1938, among other employees. This tabulation we number for convenience as items 1 to 7 inclusive.

Item	Position	Rate of Pay	Number of Hours
1	Stenographer	\$140.70	117½
2	Head Maintenance Clerk	210.20	43½
3	Car Record Clerk (Claimant)	4.87	20

Item	Position	Rate of Pay	Number of Hours
4	Timekeeper	140.20	1
5	Law Department Work (not rated)		3
6	Stenographer	5.98	1
7	Retained by Kilcoyne in his new excepted position (not rated)		8
TOTAL			194 hours

This breakdown of the duties of the position and tabulation of re-assigned work is a conclusive admission by the carrier that the same work remained after the position was abolished despite its protestation that its business had been so materially reduced from 1929 to 1938 that there was no justification for continuing the position.

The Board has repeatedly held that the carrier is within its rights in abolishing positions when the work has disappeared or substantially reduced in volume. It has also repeatedly held that the carrier cannot discontinue or abolish positions and assign the duties thereof to employees not covered by the agreement. See Award No. 637, Docket No. CL-644.

The carrier violated the agreement with respect to that portion of the work covered by Items 5 and 7 above.

Work may not be taken from a position covered by the agreement and then assigned to a lower rated employee who is covered by the agreement. Such a redistribution of the work of the abolished position to lower rated employees as shown in Items 1, 3, 4 and 6 was a violation of the intent of Rules 38, 39, 41 and 50. "The negotiated rates covering positions of course took into consideration the attendant duties and if after agreeing upon the rates the carrier could switch the duties around in this manner, it could completely nullify the wage scale." Award No. 751, Docket No. CL-744.

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 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

That the carrier violated the rules of the agreement as indicated in the opinion.

AWARD

Claims (1) and (2) sustained except as to the hours of work covered by Item 2 of the tabulation in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 31st day of July, 1941.

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

INTERPRETATION No. 1 TO AWARD No. 1539

DOCKET No. CL-1430

NAME OF ORGANIZATION: Brotherhood of Railway and Steamship Clerks,
Freight Handlers, Express and Station Em-
ployes

NAME OF CARRIER: Midland Valley Railroad Company

Upon application of the representatives of the carrier involved in the above award, that this Division interpret the same in the light of the dispute between the parties as to its meaning, as provided for in Sec. 3, First (m) of the Railway Labor Act, approved June 21, 1934, the following interpretation is made:

Claims 1 and 2 were sustained without condition or limitation except as to the hours of work covered by Item 2 of the tabulation in the Opinion and the carrier was ordered to pay the employee the sum to which he was entitled under the award. His claim as sustained was for "compensation for difference between rate paid of \$4.87 per day and the rate of \$160.20 per month for all time worked subsequent to September 12, 1938." The award permits a deduction of 43½ hours per month.

Subsequent events as now presented by the carrier are beside the point. The award and the order based thereon require payment of an amount that can be definitely computed, and that amount must be paid claimant regardless of what has transpired since the award was rendered. See Awards No. 685, No. 858 and Interpretation No. 1 thereof. See also Award No. 1314.

Referee George E. Bushnell, who sat with the Division, as a member, when Award No. 1539 was adopted, also participated with the Division in making this interpretation.

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

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 24th day of November, 1941.

"restricted to the employes specifically named therein, since the correspondence shows that they were the only ones discussed in conference."

Referee George E. Bushnell, who sat with the Division, as a member, when Award No. 1421 was adopted, also participated with the Division in making this interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 24th day of November, 1941.