

Award No. 1766
Docket No. CL-1607

**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**

**MISSOURI-KANSAS-TEXAS RAILROAD COMPANY
MISSOURI-KANSAS-TEXAS RAILROAD COMPANY
OF TEXAS**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks that:

(1) The carrier (Missouri-Kansas-Texas Railroad Company, Missouri-Kansas-Texas Railroad Company of Texas) violated and continues to violate its agreement with the organization when on November 3, 1939, it abolished the position of "Bond Clerk," identified in the agreement as No. 3221, and located in the office of the Auditor, Revenue Department, Station Agent's Bureau of the Accounting Department at Dallas, Texas; and

(2) The carrier (Missouri-Kansas-Texas Railroad Company, Missouri-Kansas-Texas Railroad Company of Texas) refuses and continues to refuse to re-create the position and maintain it, until it is discontinued in accordance with existing rules and agreements; and

(3) That the carrier (Missouri-Kansas-Texas Railroad Company, Missouri-Kansas-Texas Railroad Company of Texas) shall now be required by appropriate award and order of the Board to restore the position to the scope and operation of the rules of the existing wage and working agreements; and

(4) That the following employes, as well as all other employes, adversely affected by the arbitrary, illegal and unauthorized action of the carrier, shall be reimbursed for any and all monetary losses sustained retroactive to November 3, 1939:

G. H. Hamilton
W. S. White
J. S. Nevitt
E. H. Bailey
J. L. Svadlenak

G. H. Miller
R. Eahart
G. W. Lane
B. L. Mitchell
E. E. Seale

and

(5) And each and all of them shall be reassigned to positions held by them on November 3, 1939.

EMPLOYES' STATEMENT OF FACTS: At Dallas, Texas, this carrier maintains a general accounting office, supervised by an Auditor. That de-

That the carrier and the petitioner did not abrogate the agreement of August, 1925, when the sheets known as addendum No. 5 were issued, in November, 1937.

That in abolishing position of Bond Clerk, No. 3221, it did not violate the agreement, because:

A substantial amount of the work being performed on the bond clerk's position was assigned to positions paying a rate substantially higher, even, than that of the bond clerk; and higher, still, than the agreed rate for the character of much of the work involved.

A substantial amount of work was transferred to position paying rate higher than that which is the agreed rate for the work;

And that the action of the carrier in assigning all of the work which was being performed on the bond clerk's position, when abolished, to positions paying rates higher than the agreed rate for the work, fully complied with the carrier's obligation;

for which reasons the carrier submits that the agreement has not been violated; the employes have not been damaged; and the claim is invalid and should be denied.

Except as herein expressly admitted by the Carrier, the carrier denies each and every, all and singular the allegations of the employes submissions and respectfully requests that the petitioner be placed on strict proof of each and every, all and singular the allegations contained in said submissions.

OPINION OF BOARD: Prior to November 4, 1939 there existed in the office of Auditor, Revenue Department, Station Agent's Bureau in the Accounting Department, Dallas, Texas, the position of Bond Clerk, No. 3221, rate \$6.45 per day. This position was discontinued commencing November 4, 1939. At the time the position was discontinued it carried a full assignment of work, which was assigned among other employes. This was work which had been assigned to this position for a number of years prior to the time the position was abolished, and work which was assigned to the position at the time Addendum No. 5 to the agreement between the parties was executed. Addendum No. 5 became effective August 1, 1937; paragraph 2 thereof provides: "The rates of pay and classification of positions set forth herein, shall be considered a part of said agreement dated August 1, 1925, and subject to provisions of rule 78 of said agreement."

Rule 78 provides in substance that the rules and regulations agreed to shall remain in force and effect until changed by the procedure therein provided. Concededly, there was no attempt to comply with Rule 78 when this position was abolished. As a part of Addendum 5 this position was listed by Position Number, Title, and Rate of Pay. We are convinced that this constituted a classification of the position within the meaning of paragraph 2 of Addendum 5, which makes a change in that classification "subject to the provisions of Rule 78."

Speaking with reference to this same Addendum 5 this Division said in Award 1551: "Also, Addendum No. 5 to the current rules Agreement bearing effective date of August 1, 1937, shows position No. 5840, night interchange clerk, at Wichita Falls Freight, rate \$5.55 per day. In that Addendum the Carrier recognized the position here in question, the classification, rate and location thereof, and that it would not abolish the position except as provided in Rule 78."

We are of the opinion that, the work of the position remaining, there was a violation of paragraph 2 of Addendum 5 when this position was abolished without complying with Rule 78 of the Agreement.

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 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 paragraph 2 of Addendum 5 to the current Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 17th day of April, 1942.