

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John W. Yeager, Referee

PARTIES TO DISPUTE:

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

**THE ATCHISON, TOPEKA AND SANTA FE RAILWAY
COMPANY**

STATEMENT OF CLAIM: (1) Claim of the System Committee of the Brotherhood that clerical experience secured by Clerk Charles F. Goodspeed while in the service of the United States Army is sufficient to warrant full clerical rate in application of present Article XII, Sections 2-a, 2-b and 2-c of the Clerks' Agreement; and,

(2) Claim that failure to compensate Clerk Goodspeed at full clerical rate of positions worked, starting July, 1931, is a violation of the rules of the Clerks' Agreement; and,

(3) Claim that Clerk Goodspeed shall now be compensated for the difference between what he has received and what he would have received had he been given credit for clerical experience gained while serving as clerk in the United States Army.

EMPLOYEES' STATEMENT OF FACTS: Mr. Goodspeed was hired as a trucker, Class 3, at Barstow, California, on July 16, 1929, and established seniority in that Class as of that date. He continued regular employment in this Class and was used "extra" on positions in Class 2 until the latter part of July, 1931, whereupon he was temporarily promoted to Class 1 as check clerk, rate \$5.75 per day.

The party who prepared the station payroll for the pay period in July, 1931, during which Goodspeed was used on the Class 1 position, allowed him the full going rate therefor. This allowance was challenged by the station timekeeper in the Division Superintendent's office when the payroll went there for audit and approval and ruling was made that Goodspeed was not entitled to the full going rate for the position. At this time Goodspeed's regular assignment was crew caller, Class 2, rate \$4.91 per day. Accordingly, he was allowed the benefit of the provisions of Section 2-c of Article XII of the Agreement and was paid at the going rate for his regular position of crew caller, viz., \$4.91 per day, for the time he occupied the position of check clerk. Thus, the deduction made from the going rate for this service was 84¢ per day.

This brought up the question of whether or not Goodspeed was subject to the application of the provisions of Sections 2-a and 2-b, Article XII of the Agreement. He explained to the Agent that during his enlistment in the United States Army he served as company clerk of Company (H), Seventeenth Infantry, from April 17, 1920, to an undetermined date in October, 1921.

until July 1, 1938 when he was regularly assigned to the stenographer-clerk's position at Barstow after he had acquired the necessary knowledge through schooling but not through "experience" as required by the rule. It will also be observed that, based on Mr. Goodspeed's birth date of May 6, 1905, he was just over seventeen (17) years of age when discharged from the U. S. Army, and it is a logical assumption any clerical "experience" gained at that age more closely resembles ordinary schooling than actual "experience" within the intent of the rule. Clerical experience gained in schools has never been credited to an employe in the application of Sections 2-a and 2-b of Article XII of the current Agreement.

The General Chairman has stated that he views the U. S. Army sergeants as being the superior officers of Mr. Goodspeed while in the U. S. Army and their affidavits should therefore be accepted in lieu of the statements requested from Goodspeed's former Commanding Officers. The Carrier will not deny that these sergeants were his superior officers, but it emphatically denies that they were his former Commanding Officers a distinction which should be evident to all. The sergeants were admittedly associated with Mr. Goodspeed during his Army service and they also state he served in a clerical capacity; they do not claim to have had any supervision over Goodspeed, nor do they state they had occasion to direct and supervise his duties thereby acquainting themselves with the nature and extent of these duties. Only the former Commanding Officers of Mr. Goodspeed would be in a position to furnish such information. Attention is directed to the fact that the Carrier has not as yet been provided with that information.

OPINION OF BOARD: Charles F. Goodspeed entered the service of the Atchison, Topeka and Santa Fe Railway Company, the carrier involved here, as trucker, a class 3 employe, at Barstow, California on July 16, 1929.

On July 27, 1931 and for a total of 43 days between that date and February 10, 1937, he was called upon to perform clerical service for which days he received the rate of pay required by the controlling agreement between the carrier and employes of this class who at the time of assignment had less than six months' experience in railroad clerical work or its equivalent in outside industry. (Article XII, Section 2-a.)

In August, 1931 Goodspeed complained to his immediate superior that he was entitled to the rate of pay of one having had 18 months railroad clerical experience or its equivalent since he had gained over 2 years clerical experience while serving an enlistment in the United States Army. At the time he was instructed to secure information as to his clerical experience from his commanding officers. Such information was not furnished.

From July 16, 1929 to February 10, 1937 Goodspeed continued in his position as trucker except for the 43 days when he was granted a leave of absence on account of illness. While he was on leave he took a stenographic course. Whether or not he had any knowledge of or experience in stenography before is not disclosed.

On July 1, 1938 he returned to the service and was assigned to the position of stenographer-clerk to the agent and was given the rate of pay for beginners in the position for the first six months, the graduated rate for the next 12 months and the full rate for the position thereafter. (Article XII, Section 2-a)

The Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes, claimant, on behalf of Goodspeed claims that he was entitled to the full rate of pay of a clerk with 18 months experience from the time he assumed the position by reason of experience gained in the United States Army, and is entitled to an award for the difference between the amount of pay received and the amount it is claimed he should have received.

The rule under consideration here, as has already been indicated is Article XII, Section 2-a and is as follows:

"Section 2-a. Employes hired or promoted to clerical positions, who have had less than six months' experience in railroad clerical work or clerical work of a similar nature in outside industries shall be paid a rate of 96¢ per day (\$24.48 per month) less than the established rate of the position until they accumulate six months' clerical experience, when they will be advanced to a rate of 64¢ per day (\$16.32 per month) less than the established rate of the position. Upon the accumulation of eighteen months' clerical experience they will be advanced to the established rate of the position."

In the light of what has been set out here it is readily observable that this claim does not call for an interpretation of rule or reference to precedent. It must be determined upon the question of fact of whether or not, under the plain and unambiguous terms of the rule, Goodspeed had acquired eighteen months' experience in the United States Army of a similar nature to railroad clerical work.

In support of the contention that he had clerical experience similar in nature in the United States Army Goodspeed's statement is appended to the record as are the affidavits of two sergeants and one master sergeant.

The affidavits are all general in character and go only to the point that Goodspeed was Company Clerk of Company "H" and that he worked as clerk in the Correspondence School and Regimental Headquarters. They in no wise attempt to identify the duties of the positions or a familiarity on their part with such duties. Two of the affidavits come from sergeants of another Company, and the other from a master sergeant probably attached to no Company.

In Goodspeed's statements are outlined in considerable detail the clerical duties performed in the various capacities. They cover a wide and important range over a period of more than two years. They cover typing and the taking of dictation in longhand but no shorthand.

The position to which Goodspeed was assigned on July 1, 1938 was that of stenographer-clerk. The carrier concluded, on the showing made, that Goodspeed had not had in the United States Army eighteen months' experience of a similar nature to railroad clerical work.

The evidence presented here is insufficient to justify this Division in overruling that conclusion. The claim should be denied.

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 employe involved in this dispute are respectively carrier and employe 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

The record does not disclose that there has been a violation of the controlling agreement.

AWARD

Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 28th day of May, 1942.