Award No. 2158
Docket No. CL-2025

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Bruce Blake, Referee

PARTIES TO DISPUTE:

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

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY SYSTEM, INCLUDING GULF, CLORADO AND SANTA FE RAILWAY COMPANY, PANHANDLE AND SANTA FE RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that the Carrier violated the rules of the Clerks' Agreement when on April 16, 1938, it abolished Position No. 72, Cameron, Texas, rate of pay $4.77 per day and established in lieu thereof Position No. 80, rate of pay $2.58 per day; and,

Claim that the Carrier shall be required to reimburse employes affected for wage losses sustained through such rules violation for the period April 16, 1938, to May 25, 1938, the date position of Station Helper was abolished.

EMPLOYES' STATEMENT OF FACTS: On April 16, 1938, Carrier nominally abolished a Class 1 clerical position titled Clerk at Cameron, Texas, rated $4.77 per day, identified on the payroll as Position No. 72. Concurrently therewith it created and established a Class 2 position titled Station Helper, rated $2.58 per day, identified on the payroll as No. 80.

Position No. 72 was last advertised for bids in Superintendent's Bulletin No. 8381, dated October 8, 1937, which we quote in full for the purpose of evidencing the work assignment:

"GULF, COLORADO AND SANTA FE RAILWAY COMPANY
OFFICE OF SUPERINTENDENT
SOUTHERN DIVISION

Bulletin No. 8381

Clerk Position—Cameron

Temple—October 8th, 1937

ALL CONCERNED:

There is a vacancy of Clerk's position at Cameron, Texas:

ASSIGNED HOURS: 8:30 A. M. to 5:30 P. M.—Daily. One hour off for lunch. No Sunday Assignment.

SALARY: $4.77 per day. Employes with less than six months experience will receive 96 cents less than the maximum rate; employes with six months and less than eighteen months experience will receive 64 cents less than the maximum rate.

Award 1789—Referee Rudolph:

"The burden rests upon one asserting a claim under this rule to establish that he has not received the same consideration as others in the service, and claimant has not only failed but made no attempt to meet this burden."

In conclusion, the Carrier has complied with the requirements of the rules cited by the Employes; it has applied the rate to the position of helper that had been applicable thereto when it was formerly in existence, and did not transfer rates from one position to another; and it did not discontinue an established position and create a new one under a different title covering realtively the same class of work for the purpose of reducing the rate of pay or evading the application of the rule.

The controversy is thus narrowed solely to the question of classification, i. e., is the helper position a Class 1 or a Class 2 position as defined by the Agreement? The Carrier has shown that the Agreement clearly and specifically provides in Article II, Section 1-a, hereinabove quoted, that for a position to be classified as clerical the employe assigned thereto must be required to regularly devote not less than four hours per day to the writing and calculating incident to keeping records and accounts, etc.; the definition does not provide, as seems to be contended by the Employes, that a position is clerical if it performs four or more hours work of any sort that may have at some previous time been performed by a clerical employe. The Carrier has definitely shown that the helper at Cameron is not regularly required to perform as much as four hours clerical work as defined in the agreement, and the Employes have admitted that such is the case.

On the basis of these facts, the Carrier respectfully requests the Board to render an award denying the claim in its entirety.

OPINION OF BOARD: From the standpoint of the **actual** amount of time the holder of Position 80 put in on cleical work there cannot be said to have been any violation of Article II, Section 1-a of the agreement. For the parties are agreed that the **actual** amount of time put in on clerical work was less than four hours. Under similar circumstances this Division has held against claimants in Awards Nos. 300, 301 and 806.

Nevertheless, claimants contend that there was a violation of Article XII, Section 6 which provides:

"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.**"

When it abolished Position 72 and created Position 80 the carrier assigned more than five hours of the duties (clerical and non-clerical) of the former position to the latter. And, in order to keep within the letter of Article II, Section 1-a, had to allocate 2'20" of dead time to non-clerical duties. Under similar circumstances this Division sustained a claim of violations of the rules in question. Award No. 831. But it was there said:

"Rule 2 of the Agreement defines a 'clerk' as an employe who regularly devotes not less than four hours to the kind of work therein described as clerical. In the application of this test, precedents are not always helpful because of the circumstances vary from case to case. As a matter of fact, the test cannot be applied with mathematical precision. It does not seem fair or equitable, as urged by the carrier, that all time between tasks, particularly between clerical tasks, should fall in the category of non-clerical time. A certain amount of such time is necessarily incident to the tasks of a clerk, and should be included in the determination of the status of an employe within the meaning of Rule 2.

"The evidence of record justifies the finding that the claimant was at the time this dispute arose a **clerk** within the meaning of Rule 2.

"This award is not to be construed as a limitation on the privilege of a carrier to discontinue a position when the work involved has really disappeared; * * *"

So the question for determination is whether in abolishing Position 72 and establishing Position 80 the carrier did so with the intent of violating Article XII, Section 6. We do not think it did. From our examination of the record we are satisfied the change was a bona fide attempt to reduce expenses because of a decrease of business; that, in consequence, there was such a decrease in clerical work that the carrier was justified in abolishing Position 72 and distributing the clerical work appertaining to it among the remainder of the force and to the new position 80. This conclusion finds ample support in the fact that on May 25, 1938 the carrier abolished Position 80 and has never restored it nor Position 72. In other words the work has ever since been done by a staff of one less than when the change was made on April 16, 1938.

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 was no violation of the agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 19th day of April, 1943.