

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Howard A. Johnson, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES
CHICAGO, BURLINGTON & QUINCY RAILROAD
COMPANY**

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

(1) The carrier has since the low point of the depression (1933) ignored and violated the provisions and intent of the Clerks' Agreement as herein-after stipulated when increasing the force employed in the home fare section of the office of the Auditor of Ticket Accounts, and

(2) That the carrier shall now be required to establish the same ratio of home fare clerks, A, B and C in the Auditor of Ticket Accounts office as existed prior to 1933, and

(3) All employees adversely affected by reason of said violation be reimbursed for wage loss suffered retroactive to January 6, 1942, the date protest and claim was filed.

EMPLOYEES' STATEMENT OF FACTS: The home fare section or bureau of the Auditor of Ticket Accounts office has to do with the apportionment of all interline tickets sold, meaning tickets involving the Burlington Lines and one or more other carriers. The clerks employed in this office audit all reports submitted by the Agent monthly or semi-monthly whichever the case may be, for the purpose of seeing that Agent has properly reported each ticket sold, that proper tariff fare has been collected, that each carrier involved receives its proper portion of revenue according to tariff requirements and wherever an Agent has overcharged a passenger the Agent is notified of his error and attempt made to contact the passenger and make refund. Undercharges are also noted with the same procedure being followed in collecting the additional amount from the passenger. Should a passenger decide to travel via some other route and exchange his ticket, these clerks must see that carriers involved in the new routing receive their proper proportion of revenue and recover any revenue paid to a carrier not involved in the new routing. Then, too, the passenger may not complete his trip by rail in which case request is made for refund of the unused portion of ticket and in such instances the clerks must see to it that each carrier receives its proper share of the revenue for service which has been performed and that proper refund is made to the passenger.

The important and exacting part of this work prior to the peak of the depression (1933) was performed by employees holding positions designated as home fare "A" clerks, and understudies home fare "B" clerks, and beginners home fare "C" clerks were utilized in very limited number to assist with minor details and school themselves eventually for home fare "A" positions as vacancies occurred or force was increased and the preparation of top jobs as compared to understudies and beginners, together with rates paid for 1933 and the ten years immediately preceding were as follows:

COMMENTS BY THE BOARD

AWARD 1280

"It is the Carrier's contention that this is a new job, and therefore is properly rated. The Board recognized the principle in Award No. 751, but is of the opinion that the weight of evidence in this case does not sustain the Employees' position, but is a new position and comes within the principles announced in Award No. 1143."

AWARD 1299

"The record clearly indicates that the real purpose of this claim is to obtain a rate of pay for the two positions held by claimants equal to the other six positions of similar nature. Quite obviously the Board has no power to change the agreement the parties themselves have made."

AWARD 1315

"Approaching from another angle the same result is reached. As stated in Award 1314, Docket CL-1336, a position is identified not only by its title which may change, but by the work which characterizes it and which is 'recognized' as belonging to it."

AWARD 1390

"There is here a failure of proof of violation of Rule 76."

Summing up, it is the position of the Management that:

- (1) the positions in question were and are now rated according to the grade of work performed in accordance with old rule 56, current rule 40;
- (2) the wages of new positions were fixed according to old rule 59, current rule 44, based upon comparison of duties; and
- (3) no positions were abolished and new ones substituted under different titles, covering relatively the same class of work, in order to effect a reduction in wage rates or otherwise evade rules. Therefore, there was no violation of Rule 63 and that is the only rule the petitioner has relied upon.

OPINION OF BOARD: The force of Class A, B and C Clerks in the home fare section of the Auditor of Ticket Accounts, without showing changes made in the course of each year, has been as follows:

Year	A	B	C	Total	Year	A	B	C	Total
1922	5	3	1	9	1933	4	1	0	5
1923	6	3	1	10	1934	5	4	0	9
1924	6	3	1	10	1935	4	2	1	7
1925	6	2	2	10	1936	5	1	2	8
1926	6	2	2	10	1937	4	2	2	8
1927	6	2	2	10	1938	4	2	2	8
1928	6	2	2	10	1939	4	2	4	10
1929	6	3	1	10	1940	5	2	3	10
1930	6	1	2	9	1941	5	2	4	11
1931	6	1	2	9	1942	6	5	4	15
1932	5	2	0	7	1943	7	6	4	17

The present daily wages are as follows: "A" clerks \$8.15, "B" clerks \$7.35 and "C" clerks \$6.80.

The claim is that the force should now be made up of A, B, and C clerks "in the same ratio * * * as existed prior to 1933"; that since the ratio has changed with the new increase of work, it necessarily follows that the higher rated work has been improperly assigned to lower rated employees.

The Carrier answers that the rules do not provide for established ratios between groups of employes; that the work of various classes of clerks has not increased in the same ratios; that the work of higher paid employes has not been assigned to lower paid ones; that the A Clerks are still making the original computations of proportionate proceeds of interline tickets and that the greatest increase has been in the simpler and less involved work of the lower classifications of clerks in applying established formulae and tables.

No especial reason is given why the years prior to 1933 should be accepted as standard with reference to the post-depression years. During the earlier period, the percentage of A Clerks varied from 56% in 1922 to 71% in 1932, which in itself is a considerable variation. It would be impossible to designate even approximately the ratios for the B and C Clerks; sometimes they were equal in number, sometimes B Clerks outnumbered the C Clerks three to one and sometimes the B Clerks outnumbered the C Clerks two to one; the percentage of B Clerks varied from 11 to 33% and that of the C Clerks from nothing to 20%. It would be impossible to adopt any definite percentage, even for the A Clerks, without accepting as standard the static period from 1923 to 1929 when it remained at 60%; but that particular period has not been suggested as a standard nor any reason advanced for its selection as such. However, in any event it would be impossible to accept even that period for the B and C Clerks, for in four years of that period the B Clerks were equal in number to the C Clerks and in the other three years exceeded them three to one. Certainly any standard selected would have to apply to all three classes of employes.

It is apparent from the above tabulation that the higher class jobs have not actually been abolished and the work assigned to lower classes; for while in 1932 and 1933 the number of A Clerks was reduced from the high of six during the preceding year, the numbers of B and C Clerks were much more drastically reduced and the C Class, in fact, entirely eliminated; and, while the A Clerks fluctuated in numbers between four and five during the nine years after 1932, the purpose was clearly not to assign the work to lower class clerks, the year 1937 being the only year in which the number of A Clerks was reduced and the number of B and C Clerks increased; during the last two years the number of A Clerks has been increased and has at all times equaled or exceeded the number in any prior year.

Thus there has been no actual decrease in Class A Clerks, and while both the actual and the relative numbers of B and C Clerks have increased, the Carrier's uncontroverted explanation shows that the reason was, not that A Clerks' work had increased proportionately and had been assigned to B and C Clerks, but that the work of the latter classes had increased.

As noted above, it is apparent from the chart that during the suggested test period prior to 1933 there never was any established ratio between the B and C Clerks. Sometimes there were two of each, sometimes three B and one C Clerks and sometimes one B and two C Clerks. In 1932, 1933 and 1934 there were no C Clerks at all, but during most of the years 1922 to 1938, inclusive, there were either one or two of them. In 1939 the number of C Clerks was increased to four but the number of A and B Clerks was not changed; the result was that, while the percentages of A, B and C Clerks in 1937 and 1938 were 50, 25 and 25%, respectively, in 1939 they became 40, 20 and 40%. The A Clerk percentage could have been kept at 50% by adding one clerk of that class, but if another B Clerk had been added, thus entirely eliminating the two new C Clerks, the percentages would have been 50, 30 and 20%, making a relative increase in the B Class and a decrease in the C Class. Thus, assuming that any period can properly be selected as a standard, it will be impossible to preserve any but approximate ratios.

The next year, 1940, the number of Class A Clerks was increased to five and the number of C Clerks decreased to three, thus making the percentages

50, 20 and 30% or nearly the same as in 1938. In 1941 another C Clerk was added without changing the numbers of A or B Clerks; in 1942 the A and B Classes, but not the C Class, were increased.

It would seem that if any past years could be selected as a standard, 1937 and 1938 would, in view of the changed post-depression conditions, be more nearly analogous to subsequent years than the period preceding 1933. While the 1937 and 1938 percentages were 50, 25 and 25%, the figures at the beginning of 1943 were 41, 35 and 24%. During 1943, one A and one B Clerk were added, making the final numbers shown by the record 8, 7 and 4 and the final percentages 42, 37 and 21%, which are nearly as close as possible to the 1937 and 1938 percentages. While the percentages of A Clerks is down slightly, so is that of the C Clerks, with that of the B Clerks increased considerably, from 25% to 37%. The only way in which the percentages could be brought closer to the 1937 and 1938 standard would be to advance one B Clerk to the A Class making the numbers 9, 6 and 4 and the percentages 47, 32 and 21 in which case the excess of B Clerks would more than make up for the very slight deficiency in the A class, the C deficiency being relatively greater.

The combined daily wages of the present 19 clerks is \$143.85. If the suggested change were made, their combined wage would be \$144.65 or 80¢ more. Certainly the variation, coming as it has over so many years, is not great enough to indicate the improper purpose of assigning Class A Clerks' work to Class B Clerks for the purpose of saving money. Even if the 60% ratio of 1923 to 1929 were arbitrarily assumed for the A Clerks, in spite of the fact that no definite ratios in that period can even be suggested for B and C Clerks, the number of A Clerks would be increased to eleven. Certainly if that were done the numbers of the B and C Clerks could not be considered out of line with former years if they stood at 5 and 3, respectively. In that event, the total daily wages would be \$146.80, or \$2.95 more than it actually is.

Of course, if B Clerks are doing A Clerks' work, they should receive the pay of the higher grade, even if a daily difference of only \$2.95 is involved; but the point is that the difference of \$2.95 per day for the entire force of 19 clerks can hardly be taken as proof that A Clerk's work is being assigned to B and C Clerks in order to save money. In addition the record shows affirmatively that the work of the three classes has not increased proportionately and that the work of higher grades has not been assigned to lower ones.

To summarize, the record shows that it would be impossible to establish a ratio for the A Clerks, even during the years prior to 1933, unless we arbitrarily select one percentage or another; and it would be utterly hopeless to attempt to establish any ratios for the B and C Clerks during that period. The record does not disclose that the years preceding 1933 could more appropriately than other years, such as the post-depression years of 1937 and 1938, be selected as the standard for subsequent years; or that the work of the three classes of clerks varies from year to year in exactly or even approximately the same proportions; or that there has been any undue increase in the number of lowest paid C Clerks, either absolutely or proportionately; or that A Clerks' work has been assigned to B Clerks, or B Clerks' work to C Clerks.

On the other hand, the record shows affirmatively that clerks of the higher grades have not been eliminated and their work assigned to clerks of lower grades, that the slight proportionate decrease in the ratio of A Clerks and the greater increase in the ratio of B Clerks has resulted from the increase of B and C Clerks' work, and that there has been no undue increase either in numbers or in ratios of the B and C Clerk groups.

In this analysis we have assumed, without deciding, (1) that in the absence of a showing to the contrary the work of various classes of clerks

should be assumed to have increased proportionately; and (2) that the proportionate increase of the B and C clerks, in spite of an absolute increase of the A and B clerks, should therefore normally be assumed to indicate the assignment of higher rated work to lower rated employees.

It is contended also that the work of the three classes of clerks is of "relatively the same class" and that as there were no C clerks employed in 1932, 1933 and 1934, none such could properly be established in 1935 or succeeding years; but the contention seems not to be seriously advanced, is inconsistent with the claim that the ratios of all three classes should be the same as in the years prior to 1933, and would now seem to come too late.

We conclude that 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 Employees involved in this dispute are respectively carrier and employees 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 by the Carrier.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 17th day of December, 1943.