

Award No. 2489
Docket No. CL-2558

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

PARTIES TO DISPUTE:

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

THE ERIE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks that the carrier violates the rules of the Clerks' Agreement dated September 1, 1936 when on August 16, 1937 it abolished position classified as Revision Clerk, rate \$125.00 per month at East Buffalo, New York and assigned a portion of the duties of this position to a lower rated position classified as Carbon Setter, rate \$85.20 per month at East Buffalo, New York, and

That the carrier shall now reclassify and rate position of Carbon Setter as Revision Clerk and establish a rate of pay of not less than \$125.00 per month retroactive to March 15, 1939, and

That employe J. Volkenner and all others affected since that date shall now be reimbursed at the rate of \$125.00 per month to which should be added wage increases of September and December, 1941, and any subsequent wage increase.

EMPLOYES' STATEMENT OF FACTS: The employes submit as their Statement of Facts an agreed upon statement of facts signed by Superintendent, Mr. G. C. White and Division Chairman J. B. Graney reading as follows:

"AGREED STATEMENT OF FACTS:

Position of Revision Clerk, rate \$125.00 per month was established at East Buffalo, New York on July 21, 1928.

Position of Carbon Setter, rate \$75.00 per month was established at East Buffalo, New York, same date (Present rate \$85.20 per month).

The Revision Clerk's position consisted of revising and typing out-bound waybills. Due to continual decline in business it was necessary to abolish this position effective August 16, 1937. Typing out-bound waybills which was formerly performed on this position was distributed among other typists in that office and the revising of out-bound waybills was taken over by Carbon Setter.

At the present time Carbon Setter's position consists of: Sorting shipping orders, sorting waybills, revising waybills; placing carbon in waybills for free-astrays, Company's and Unclaimed freight, and assists in typing waybills during peak periods.

For the Committee:

sgd/ **J. B. Graney**
Division Chairman, B. of R. C.

Buffalo, New York
January 13, 1942."

For the Company

sgd/ **G. C. White**
Superintendent

There was no actual "Revision" work and this proposal by the General Chairman was declined.

Work similar to that done by this carbon setter is generally performed at many locations at the minimum rate of pay, which at present is \$3.68 per day, or approximately \$93.84 per month, while this Carbon Setter position at East Buffalo is rated and paid \$105.60 per month.

This claim should be denied for the following reasons:

1. There is no violation of Rules and Regulations September 1, 1936 as alleged by the Brotherhood.
2. Revision Clerk position was abolished August 16, 1937, and "Revision work" was discontinued.
3. Nothing in Rules and Regulations September 1, 1936 establishes pay rates except Rule 37 and this rule does not apply here.
4. Prior to effective date of the Fair Labor Standards Act there was no agreed minimum rate for Clerks. Section 2 of Mediation Agreement signed at Chicago, Ill. on December 15, 1941, set a minimum rate of \$.46 per hour, or \$3.68 per day, (\$93.84 per month). Carbon Setter rate is \$105.60 per month, which is commensurate with duties performed.
5. No special training or experience required, and incumbent of position is not required to assume the duties and responsibilities that would justify a higher rate of pay.

OPINION OF BOARD: The evidence of record is that after the abolishment of the position of Revision Clerk there were transferred to the position of Carbon Setter clerical duties occupying a major portion of the time of the occupant of that position which were of a higher rated classification than that formerly attaching to the position. This record warrants the opinion that a position of higher classification than that attributed to the position of Carbon Setter, prior to the abolishment of the position of Revision Clerk, is justified and that the parties should agree upon a rate of pay therefor in harmony with the factors stipulated for consideration in establishment of new positions stated in Rule 37.

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 a position of higher classification than that attributed to the position of Carbon Setter, prior to the abolishment of the position of Revision Clerk, is justified and that the parties should agree upon a rate of pay therefor in harmony with the factors stipulated for consideration in establishment of new positions stated in Rule 37, effective May 1, 1943, the date of conclusion of check of duties as evidenced by Exhibit "A".

AWARD

Claim remanded for disposition in accordance with the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 2nd day of March, 1944.