

Award No. 2998

Docket No. CL-3025

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Curtis G. Shake, Referee

PARTIES TO DISPUTE:

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

TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS

STATEMENT OF CLAIM: (1) Claim of the Terminal Board of Adjustment, Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, that the Carrier violated and continues to violate the Clerks' Agreement when it refused and refuses to classify the positions of Photostat Machine Operators in the Pullman Reservation Office of the Ticket Department as clerical positions and properly compensate the occupants as such.

(2) That the present occupants and/or their successors be reimbursed the difference between the rate of \$4.56 per day and \$6.12 per day from December 20, 1944.

EMPLOYES' STATEMENT OF FACTS: On October 1, 1944, there was installed in the Pullman Reservation Office of the Ticket Department a Photostat Machine to be used in the recording of pictures of the Pullman diagrams of all trains leaving Union Station which pictures were to be made before the diagrams were turned over to the Pullman Conductors or Passenger Agents. The purpose of this was to enable the Ticket Office Department to retain a true and correct copy of each diagram in its files in event any dispute should arise concerning space or reservation after the train had departed.

When this photostat machine was first installed it was operated by one of the office girls during her tour of duty (11:00 A. M. to 7:30 P. M.) and when she was not on duty, it was operated by one of the reservation clerks. Early in December, 1944, it was brought to General Chairman Dwyer's attention that this office girl, Miss Mabel E. Bequette, was receiving the office girl rate of \$4.56 per day. A check was made by the representatives of the Organization which developed the fact that Miss Bequette was devoting at least 6 hours per day to the operation of the Photostat Machine. On December 20, 1944, this situation was called to the attention of the General Passenger and Ticket Agent by General Chairman Dwyer requesting that the position be properly classified as a clerical position and paid accordingly. Minimum clerical rate on this property is \$6.12 per day. The General Passenger and Ticket Agent refused to comply with the request and the dispute was progressed to the Traffic Manager and to the Director of Personnel—each of whom has declined to meet the Organization's request that the operators of the Photostat Machine be classified as clerks in accordance with the rules of the agreement and compensated accordingly. On January 17, 1945, there was posted in the Reservation Department notice addressed to the Office Girls and signed by General Passenger and Ticket Agent A. C. Barnett. This notice outlined the hours of duty that each of the three office girls was to work effective January 22, 1945, and in addition thereto, the notice contained this statement: "Do not work more than three hours a day on the photostat machine." A copy of this notice is attached and identified as Employees' Exhibit "A."

POSITION OF CARRIER: The operation of the photostat machine has no connection whatsoever with the performance of clerical work. It is of the type described in paragraph (b) of the present Scope Rule as "office and station equipment devices," the operators of which come under the category of "other office and station employees." It is only the operators of office mechanical equipment and devices **used in connection with the performance of clerical work** who are entitled to rating as "clerks" under paragraph (a) of the present Scope Rule and the first paragraph of present Rule 4. The use of the machine in taking photographs, which is its only function, has no connection whatever with the performance of clerical work of any type or character.

Paragraph (b) of the Scope Rule, effective April 1, 1945, specifically provides that clerical rating will only be granted "employees engaged in the operation of office and station appliance devices **requiring special skill or training**" and "used in the performance of clerical work." As previously stated, there is nothing resembling the performance of clerical work in the manipulation of the photographic machine and no special skill or training in clerical work is necessary for its operation. It is as simple of operation as the mimeograph and duplicating machines referred to under Group 2 of Rule 1 of the new agreement of April 1, 1945, and serves identically the same purpose.

There was no basis for the claim under the articles of the agreement of February 1, 1922 and less (if there is such a thing as less than nothing) under the provisions of the agreement of April 1, 1945.

OPINION OF BOARD: By this claim the Petitioner seeks to have photostat machine operator positions in the Carrier's Pullman Reservation Office at St. Louis classified and rated as clerical work; and to have the occupants of said positions compensated accordingly, retroactive to December 20, 1944.

The photostat machine was installed October 1, 1944. It is a mechanical device containing a camera and is designed to make photographic copies of documents and papers. Trays are attached which contain chemicals and water for fixing and washing the sensitized film after the exposures have been made. The machine is utilized by the Carrier to make faithful copies of Pullman car diagrams, for use in tracing missing tickets and duplicate sales and in adjusting disputes over space reservations. These copies are filed daily and are also furnished to the Pullman conductors to which they pertain and to passenger agents and other company officials.

We think it fair to assume from the record before us that prior to the installation of the photostat machine it was not the Carrier's practice to have copies made of car diagrams, but that if this had been done the work incident to their preparation would have fallen within the duties of clerks, either by utilizing typewriters for that purpose or by means of longhand, and that this would have been classified as clerical work under the Agreement. This seems to be the circumstance principally relied upon by the Petitioner. The Carrier, on the other hand, leans upon an interpretation of the language of the Rules as applied to the particular work here involved.

The controversy arose under an Agreement bearing effective date of February 1, 1922. Rule 1 of that Agreement defines its scope by enumerating three groups of employees that come within its purview, namely, (a) Clerks, (b) Other office and station employees, and (c) Laborers employed in and around station, storehouses and warehouses. Group (b) is further identified as including "operation of office or station equipment devices." We cannot regard this Rule as helpful in the determination of the question before us, which is primarily one of classification rather than of scope.

Rule 4 of the 1922 Agreement deals with the definition and qualifications of clerks and other employees coming within the coverage of Scope Rule 1. It may, we think, be considered as the applicable classification rule of that Agreement. Under Rule 4 employees engaged in "the operation of office mechanical equipment and devices," in connection with duties designated as clerical, are characterized as clerks, while those "operating appliances of machines for perforating and addressing envelopes, numbering claims or other papers, adjusting

dictaphone cylinders and work of like nature" are not. Considering what would have been the situation had copies of car diagrams been regularly made before the photostat machine was installed; the uses to which it was put; the character of the records processed by it; and, particularly, the duties of clerks with respect to the making, filing and keeping of records, as set forth in Rule 4 of the 1922 Agreement, we are constrained to hold that the operators of said machine occupied clerical positions under and during the life of said 1922 Agreement.

On April 1, 1945, however, the 1922 Agreement was superseded. The Scope Rule was revised but there was no change in the language of the Classification Rule, proper, other than to denominate it as Rule 3 in the new Agreement, instead of Rule 4, as it had been designated in the 1922 Schedule.

In Rule 1, of the 1945 Agreement, clerical positions are defined so as to include Clerks and "Employees engaged in the operation of office and station appliance devices requiring special skill or training, such as Key Punch Machines, Calculating and Tabulating Machines, Comptometers and such other similar equipment used in the performance of clerical work." "Operators of certain office and station appliance devices for perforating and addressing envelopes, numbering claims and other papers, mimeograph and duplicating machines, and machines used to perform work of a like nature," are listed under "Other office, store and station positions."

In view of the fact that the application of the 1945 Classification Rule may be modified by reference to its presently related Scope Rule, by virtue of an express provision of the current Agreement, and that the operation of a photostat machine is more nearly comparable to the operation of mimeograph and duplicating machines as distinguished from the use of such devices as key punch machines, calculating and tabulating machines and comptometers, according to the showing made in the record, we are obliged to hold that the Petitioner has failed to establish a violation of the 1945 Agreement. There is no proof in the record beyond the mere assertion of that fact, which is denied, that the operation of a photostat machine requires special skill or training or that it is not used to perform work of a like nature as mimeograph and duplicating machines.

The claim will be sustained as a violation of the Agreement effective February 1, 1922, from December 20, 1944 to April 1, 1945.

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 the Carrier violated the effective Agreement of February 1, 1922, from December 20, 1944 to April 1, 1945, has been established.

AWARD

Claim sustained to the extent indicated in the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary.

Dated at Chicago, Illinois, this 29th day of November, 1945.