

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Edward F. Carter, 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: Claim of the System Committee of the Brotherhood that the Carrier violated the rules of the Clerks' Agreement in the manner and to the extent hereinafter set out when on January 16, 1941, it:

(1) Assigned the principal and preponderating duties and responsibilities theretofore constituting the essence or substance of Position No. 285, Chief Clerk at rate of \$178.20 per month, to Position No. 287, Stenographer at rate of \$6.15 per day, Winslow Arizona Store; and,

(2) Claim that Position No. 287 shall be reclassified as Clerk at the rate increased from \$6.15 per day to \$6.99 per day, for the period from January 16, 1941 to September 1, 1941; and from \$6.87 per day to \$7.71 per day for the period from September 1, 1941 to December 1, 1941; and from \$6.95 per day to \$7.79 per day from December 1, 1941 to February 1, 1943; and from \$7.43 per day to \$8.27 per day from February 1, 1943 to December 27, 1943; and \$8.51 per day from December 27, 1943 forward, with appropriate adjustment in wages paid.

EMPLOYEES' STATEMENT OF FACTS: As of December 1, 1940 the office force in the Division Store at Winslow, Arizona consisted of a Division Storekeeper, Chief Clerk and Stenographer. The Division Storekeeper was not covered by the Clerks' Agreement; the Chief Clerk was excepted from the rules thereof and the Stenographer was subject to the scope and operation of all of the rules of the agreement.

Mrs. Agnes Grace Wilson, the regular occupant of the position of Stenographer, died about the middle of December 1940.

Effective January 16, 1941 the position of Chief Clerk was abolished and the regular assignee, Mr. Alton Smith, exercised his seniority to position of Stenographer made permanently vacant by the passing of Mrs. Wilson. The principal and preponderating duties which constituted the essence or substance of the position of Chief Clerk were to handle correspondence, invoices, line stock records and miscellaneous reports. Those of the Stenographer were general stenographic and typing work and filing.

Mr. Smith nominally moved from position of Chief Clerk to that of Stenographer and there was no appreciable change in his duties and responsibilities either as to volume or type. In other words he functioned in substantially the same manner, performing exactly the same duties and was vested with the same degree of responsibility in his new position of Stenographer as he was in his old position of Chief Clerk.

(3) The National Railroad Adjustment Board, Third Division, denied a claim identical in principle in its Award 2012.

The Carrier reserves the right to submit such additional facts and evidence as it may conclude are required in reply to the ex parte submission of the organization or any subsequent oral agreement or briefs the organization may file in this dispute.

OPINION OF BOARD: On January 16, 1941, the clerical force in the office of Division Storekeeper at Winslow, Arizona, consisted of a Chief Clerk, rated \$178.20 per month, and a stenographer, rated \$6.15 per day. The position of Chief Clerk was abolished and the position of "stenographer" was changed to "stenographer-clerk," no change in rate of pay being made. In the subsequent rearrangement of work, approximately 5'15" of the Chief Clerk's work, including all supervisory duties formerly performed by the Chief Clerk, were transferred to the stenographer-clerk position, and the balance of the Chief Clerk's duties were assigned to the Division Storekeeper, a position not subject to the Agreement. Concurrently with the foregoing, approximately five hours of the work of stenographer-clerk position were assigned to the Division Storekeeper. On May 5, 1942, a new position entitled "clerk" was established and the 2'45" formerly belonging to the Chief Clerk which was assigned to the Division Storekeeper when the Chief Clerk's position was abolished, was assigned to the new Clerk's position.

The Carrier concluded that the rearrangement of the work after the Chief Clerk's position was abolished until the establishment of the new Clerk's position on May 5, 1942, had been improper, it being determined that the assignment of Chief Clerk's work, including supervisory duties, to the stenographer-clerk position occupied by the former Chief Clerk, did not amount to an abolishment of the Chief Clerk's position. The Carrier urges that the stenographer-clerk actually became a new position when the supervisory duties assigned to it were transferred to the Division Storekeeper on May 5, 1942. On this theory, so the Carrier alleges, the stenographer-clerk was paid at the Chief Clerk's rate during this period.

We do not think the facts bear out the version stated by the Carrier. The record shows that on May 23, 1944, in submitting an offer of settlement to the Organization, it took the view that the Chief Clerk's position was abolished on January 16, 1941, rather than on May 5, 1942. If this be true, the position of stenographer clerk was voluntarily placed under the Agreement on January 16, 1941, at a rate equivalent to the rate paid the Chief Clerk and actually paid at that rate until May 5, 1942.

We are in accord with the view expressed by the Carrier that the Agreement does not require the transfer of the rate of pay formerly attaching to an abolished excepted position to a schedule position when the clerical work of the former is assigned to the latter. Award 2012. But that does not appear to have been the situation here. The work of an excepted position was assigned to a schedule position and paid at the same rate as the former for more than fifteen months. It is not an attempt to apply the rate of an excepted position to work under the Agreement. The Carrier has already put the work under the Agreement and fixed the rate of the position. That the work was actually put under the Agreement is further supported by the fact that the former occupant of the Chief Clerk's position was permitted to exercise displacement rights under the seniority provisions of the Agreement. If, as the Carrier says, the excepted position was not abolished, then the Carrier could have filled it without reference to seniority rights. We think the record sustains the view that the work was placed under the Agreement and the rate thereof fixed when the Carrier paid the equivalent of the Chief Clerk's rate for more than fifteen months. An affirmative award is required with retroactive compensation from May 5, 1942.

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 Agreement was violated as alleged.

AWARD

Claim sustained in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) H. A. Johnson,
Secretary

Dated at Chicago, Illinois, this 2nd day of August, 1946.

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

INTERPRETATION No. 1 TO AWARD No. 3276

DOCKET CL-3253

NAME OF ORGANIZATION: Brotherhood of Railway and Steamship Clerks,
Freight Handlers, Express and Station Em-
ployes.

NAME OF CARRIER: The Atchison, Topeka and Santa Fe Railway
Company.

Upon application of the Carrier involved in the above award, that this Division interpret the same in the light of the dispute between the parties as to its meaning and application, as provided for in Section 3, First (m), of the Railway Labor Act, approved June 21, 1934, the following interpretation is made:

The difficulty in the instant dispute is the interpretation to be given to that part of Award 3276 reading as follows: "The record shows that on May 23, 1944, in submitting an offer of settlement to the Organization, it took the view that the Chief Clerk's position was abolished on January 16, 1941, rather than on May 5, 1942." The contention is advanced that the award is grounded on this statement and that no basis for the statement is shown by the record. The following quote from the letter of the General Purchasing Agent directed to the General Chairman under date of May 23, 1944, affords a complete answer to the Carrier's contention: "Paying the occupant of position 287, steno-clerk, the difference between the rate paid the occupant of that position and the rate of position 285, chief clerk, for all time worked from the date position 285 was abolished, i. e., January 15, 1941, up to May 5, 1942, the date position 288 was established, * * *." (Emphasis supplied.)

A review of the record shows that this was only a part of the evidence tending to show that the position of chief clerk was abolished on January 16, 1941. The position of chief clerk was excepted from the clerks' agreement. The position was not only discontinued in name on January 16, 1941, but the rate of pay for that position was also discontinued. The occupant of the chief clerk's position was at that time permitted to exercise his seniority and take the position of steno-clerk, a right which accrued to him under the Agreement when the position of chief clerk was abolished.

Not only was the position of chief clerk abolished on January 16, 1941, but a new position of steno-clerk was at that time created under the existing Agreement, the duties of which were substantially the same as those of the abolished chief clerk's position. The Organization complained of the low rate of pay established by the Carrier for the position of steno-clerk. The Carrier conceded the point and paid the steno-clerk for a period of more than 15 months at the rate the chief clerk had formerly received. In other words, a new position was created within the scope of the agreement and a rate of pay voluntarily fixed and paid for more than 15 months. We hold, as we did in the award, that this rate cannot be changed except as provided in the controlling Agreement, i. e., by negotiation.

The Carrier urges that this is a case where the Organization is attempting to impose the rate of an excepted position upon a new position created

within the scope of the controlling Agreement. But such is not the case. The Organization is contending that the rate of the newly created position, voluntarily fixed and paid for more than 15 months, has become the established rate of the position and should be continued until the rate is changed in accordance with the terms of the collective agreement. The fact that the Carrier in fixing the rate of the newly created steno-clerk position decided that it should be the same as the rate formerly paid to the abolished chief clerk's position, is not a controlling factor and affords no basis for applying the principles announced in Award 2012.

The Carrier contends that the position of Chief Clerk was not in fact abolished on January 16, 1941. This affords the basis of our statement in the award that "we do not think the facts bear out the version stated by the Carrier." We think the position of Chief Clerk was abolished and a new position of steno-clerk created under the Agreement on January 16, 1941. This was clearly stated in the award and requires no further interpretation to ascertain its meaning. The contention of the Carrier that it was only "ostensibly" abolished at that time is not sustained by the record.

The Carrier argues in the alternative that the award should be made to read, by interpretation, that the rate of the position fixed by the award includes compensation for all services rendered, including any and all overtime henceforth or heretofore required of the incumbent of that position. If this request is based upon the assumption that the rate of the abolished chief clerk's position is imposed upon the Carrier as the rate for the newly created position, no basis for the contention exists as we have found this not to be the fact. The rule of the position was voluntarily fixed by the carrier. If the dispute arises out of the payment of overtime on a newly created position at a rate voluntarily fixed by the Carrier, as determined by our award, we can only say that it constitutes an issue not raised, argued, or anywise presented by this record. No facts regarding overtime are set forth from which the Division can determine whether the occupants are or are not entitled to overtime. We cannot properly decide controversies not foreseen or presented by the record under the guise of an interpretation of the award which disposes of all the matters raised by the appeal.

Referee Edward F. Carter, who sat with the Division as a Member when Award No. 3276 was adopted, also participated with the Division in making this Interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 17th day of January, 1947.