

**Award No. 3554**

**Docket No. CL-3498**

**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 CENTRAL RAILROAD COMPANY OF NEW JERSEY**

**(Walter P. Gardner, Trustee)**

**STATEMENT OF CLAIM:** Claim of the System Board of Adjustment that:

A.—The Carrier violated and continues to violate the Agreement existing between the respective parties when on March 31, 1946, they abolished the position of Chief Clerk rated at \$8.00 per day and the position of Checker-Clerk rated at 6.83 per day at Barber, New Jersey, and unilaterally established in lieu thereof two new clerical positions rated at \$6.32 per day and \$6.24 per day, and

B.—The Carrier be required to restore the affected positions at their original rates of pay (plus increase of eighteen and one-half cents per hour in accordance with the provisions of the National Wage Agreement of April 4, 1946 and May 22, 1946) and that the employees affected be paid for all monetary losses sustained.

**EMPLOYEES' STATEMENT OF FACTS:** Under date of March 21, 1946, the Superintendent advised the General Chairman that effective with the close of business on March 31, 1946, the two clerical positions at Barber, New Jersey would be abolished (Exhibit "A"). In the same communication he advised that effective April 1, 1946, two new clerical positions would be re-established in lieu of the two existing positions. The positions affected are identified as follows:

March 31, 1946		April 1, 1946	
Title	Rate	Title	Rate
From—Chief Clerk .....	\$8.00 per day	To—Clerk-Typist .....	\$6.32 per day
From—Clerk-Checker ..	\$6.83 per day	To—Clerk .....	\$6.24 per day

On March 22, 1946, while the affected positions were still in existence, the Carrier on Bulletin No. 3A-51 advertised two new positions to perform the work of the two existing positions at Barber, New Jersey. On March 22, 1946, bulletin was posted abolishing the two positions account of reclassification of the two positions, (Exhibit "B"). On this same date bulletin was posted advertising the new positions (Exhibit "C").

On March 28, 1946, the General Chairman protested the unilateral action of the Superintendent and notified him that monetary claim would be filed to protect the interested employees (Exhibit "D").

Subsequent to November 3, 1945, there remained 2 clerical positions, as follows:

1 Chief Clerk @ \$8.00 per day  
1 Clerk @ \$6.83 per day

Effective April 1, 1946, these 2 clerical positions were abolished in accordance with the provisions of the Clerks' Agreement, and 2 new positions established, as follows:

1 Clerk @ \$6.32 per day  
1 Clerk @ \$6.24 per day

The rate of \$6.32 per day is equivalent to the rate paid this position before it was re-classified as Chief Clerk, plus national wage increase. The rate of \$6.24 per day is the minimum rate specified under Supplemental Agreement effective July 1, 1944, and actually represents an increase of 20c per day as compared with the comparable rate paid the same position prior to May 1, 1942.

**CARRIER'S POSITION:** This is a case where war-time expansion of force, including re-classifications and rate adjustments commensurate with duties and responsibilities, was justified by increased war-time traffic. Following the same principles, there is justification for restoring the force to a pre-war basis following reduction of traffic and work volume to pre-war levels.

The Carrier unsuccessfully attempted to negotiate an understanding with the Clerks' Organization on the basis of these principles. The Clerks' Organization admitted that the clerical work remaining at Barber freight station was identical to that prior to May 1, 1942, but insisted that classifications and rates, once established, would have to be retained so long as any portion of the assigned work remained to be performed.

If it can be shown that the duties and responsibilities of those two remaining positions differ in any respect from those assigned to these same positions prior to May, 1942, the Carrier is agreeable to negotiating new rates of pay. Otherwise, the Carrier believes the Board will recognize the validity of the principle of changing classifications and rates of pay of positions commensurate with duties and responsibilities thereof, such as was done in the instant case.

**OPINION OF BOARD:** Effective March 31, 1946, Carrier abolished the positions of Chief Clerk, rate \$8.00 per day, and Clerk-Checker, rate \$6.83, at Barber, New Jersey. On April 1, 1946, the Carrier established two new positions of Clerk-Typist, rate \$6.32 per day, and Clerk, rate \$6.24 per day. The incumbents of the abolished positions continued on as the occupants of the newly created positions and, according to the Organization, performed the same duties that they had performed on the abolished positions. The Organization contends that this is a violation of Rule 31 (d), (e) and (f), current Agreement, which provides:

"(d) The rates for new positions shall be in conformity with the rates of analogous positions in the seniority district where created or in comparable localities and shall be established by agreement between the Management and the General Chairman.

(e) Where the duties and responsibilities or the character of the service on a regularly assigned position change to the extent that they are comparable to higher or lower rated positions the rate for that position will be adjusted by mutual agreement between the Management and the General Chairman, but established positions will not be discontinued and new ones created under the same or different titles covering relatively the same class or grade of work, which will have the effect of reducing the rate of pay or evading the application of these rules.

(f) When positions are abolished, any remaining duties will be reassigned to other positions by mutual agreement between the Head of Department and the Division Chairman."

The Carrier contends on account of exceedingly heavy movement of oil by tank car to this area during the war, it became necessary to expand the force from a maximum of three to a maximum of eight. At the close of hostilities the force was reduced until there remained the Agent, Chief Clerk and Clerk-Checker. The Carrier then abolished the two existing clerical positions and established the two new positions as we have heretofore recited. It is clear that the occupants of the two new positions continued to perform substantially the same duties as they performed as occupants of the two abolished positions.

These positions were new positions within the meaning of Rule 31 (e). See Award 3555, Dock CL-3499. As such, the Carrier could not under Rule 31 (d) and (e), establish them in lieu of the former positions except by negotiation. The attempt of the Carrier to so do by unilateral action is violative of the Agreement.

Rule 31 (d) provides that the rates of new positions shall be in conformity with the rates of analogous positions in the seniority district where created or in comparable localities. Barber is located on the Sound Shore Branch which serves Grasselli, Carteret, Barber and Perth Amboy. The Chief Clerks in all the three stations other than Barber received the \$8.00 per day rates (plus wage increases) just as the occupant of that position was receiving at Barber before it was improperly abolished. It would seem that the position at Barber was analogous to the similar positions at these other points. The Check-Clerk position at Barber was rated \$6.83 per day by the Carrier and acquiesced in by the Organization since July, 1943. Since the bulletin abolishing the position was in violation of the Agreement, the rate remains the proper rate until changed in accordance with the Agreement.

The Carrier states that these two higher rated positions of Chief Clerk and Clerk-Checker are no longer needed because of the large decrease in business amply shown by the record. We agree that Carrier will not ordinarily be required to employ a greater force than is necessary nor to employ higher rated personnel than is needed in the efficient handling of its business. The determination of such matters is the prerogative of management and rests solely with management except to the extent it has limited itself by contract. The Agreement before us does not nullify this prerogative of management, but it does limit it by prescribing the manner in which the right may be exercised. A failure to follow the method prescribed in the Agreement is an ineffective act and subjects the Carrier to the penalties of the Agreement.

**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 charged.

#### AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: H. A. Johnson,  
Secretary

Dated at Chicago, Illinois, this 22nd day of May, 1947.