

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**

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY

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

(a) That Clerk Hugh P. Fisher shall be given credit for clerical experience accumulated while serving in the U. S. Navy; and

(b) That Hugh P. Fisher shall be paid the established rate of pay of the position he occupied retroactive to March 1, 1946.

EMPLOYEES' STATEMENT OF FACTS: Mr. Hugh P. Fisher, whose Class 1 seniority date is April 4, 1942, occupied Position No. 2625, Stenographer, in the office of Division Engineer at Chanute, Kansas, prior to his induction into the U. S. Navy on December 11, 1942, and was being compensated at the intermediate rate of the position under provisions of Sections 2-a and 2-b of Article XI by reason of having accumulated over six months and less than eighteen months clerical experience. Mr. Fisher served in the U. S. Navy from December 11, 1942 until Honorably discharged on October 14, 1945. He returned to the service of the Carrier on December 1, 1945 and exercised his seniority on Position No. 2621, Statement Clerk, in the office of Division Engineer at Chanute, Kansas.

Upon information contained in Mr. Fisher's service records and confirmed by letter upon his commanding officer, F. A. Zimanski, Lieutenant Commander, U. S. Navy, showing that Fisher performed clerical work for over twenty-eight months while in the Navy, the Carrier's Superintendent, Mr. H. C. Willis, recognized that he (Fisher) had acquired sufficient clerical experience to entitle him to the full established rate of his position under Sections 2-a and 2-b of Article XI of the Clerks' Agreement, and paid him on that basis for the months of December, 1945, January and February, 1946. Effective March 1, 1946, Carrier's Superintendent reduced Mr. Fisher to the intermediate rate of pay of the position he occupied or sixty-four (64) cents per day less than the established rate of \$7.67 (now \$9.15) per day.

Attached hereto and made a part hereof and identified as Employees' Exhibit "A" is an exact copy of the letter from Lieutenant-Commander F. A. Zimanski, dated December 5, 1945, as evidence that Clerk Fisher accumulated over twenty-eight months clerical experience while serving in the U. S. Navy.

POSITION OF EMPLOYEES: There is in evidence an agreement between the parties bearing effective date October 1, 1942, in which the following rules appear:

apparent that such an oversight or misapplication of agreement rules by one of the Carrier's clerical employes cannot be considered as substantive evidence of the Carrier's interpretation of the agreement rules.

* * * *

In conclusion the Carrier asserts that the instant claim is entirely without merit or schedule support and should be denied for reasons heretofore stated.

(Exhibits not reproduced.)

OPINION OF BOARD: Clerk Hugh P. Fisher is employed in the office of the Division Engineer at Chanute, Kansas, as a stenographer with a seniority date of April 4, 1942. On December 11, 1942, he was inducted into the Navy. While in the Navy he served twenty-eight months in which he was principally engaged in performing clerical work. It is the contention of Clerk Fisher that he is entitled to credit for his clerical experience in the Navy in determining his rate of pay under the provisions of Article XI of the current Agreement.

Every question here raised is determined in Award 3950, decided herewith. On the authority of that award, the claim must be sustained.

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 Employee involved in this dispute are respectively carrier and employee 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 (a) and (b) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 30th day of June, 1948.