Award No. 4033
Docket No. CL-3998

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Jay S. Parker, Referee.

PARTIES TO DISPUTE:

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

DULUTH, MISSABE AND IRON RANGE RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that the carrier violated the Clerk's Agreement:

(a) When on March 4, 1946, it created the position of Clerk Deductions and Vacations, rate of pay $180.00 per month, and

(b) That the correct rate of pay for the position of Clerk Deductions and Vacations, on March 4, 1946, was $198.76, and

(c) That employe Harold Rosenberger and all other employes working on the position of Clerk Deductions and Vacations since March 4, 1946, shall now be made whole for wage loss suffered, by reason of violation, in the amount of $18.76 per month increase since March 4, 1946.

EMPLOYES' STATEMENT OF FACTS: Attached hereto and marked employes exhibit (a), copy of bulletin, dated February 23, 1946, abolishing eleven positions in the Payroll Accounting Department and creating in lieu thereof eleven new positions.

No decrease was made in the total number of employes in the Payroll Accounting Department at the time. There was no decrease in the volume of work performed in the department, rather there was a substantial increase in the amount of work, owing to work being brought in from the Treasurer's Office, the Engineers Office, Ore Dock Office and Coal Dock Office.

Your Honorable Board will please note that by abolishing the eleven positions and creating positions with other titles at lower rates of pay, the carrier effected a substantial monetary saving.

The position in dispute had been in existence for approximately nine months and on March 3, 1946, was paid at the rate of $198.76 per month. Under the guise of abolishing a position that had long since ceased to exist, the rate of pay was reduced in the amount of $18.76 per month.

Over a period of many months a new system of operation was installed in the department and the work of various positions was moved from one position to another, without reducing the pay of any of the employes. The work attaching to the position of Clerk Deductions and Vacations was formerly done by the Timekeepers. While the exhibit shown shows nine Timekeepers positions as being abolished, actually the three employes bidding in the positions of Machine Operators were not so used but continued to do the

tions and vacations for all departments This was accomplished by the creation of the position of Deduction and Vacation Clerk in the bulletin of February 23rd, 1946.

Regarding the rate of pay of $180.00 per month, the Carrier insists that it compares favorably with rates paid on other positions having comparable responsiblities and similar duties.

In discussing the claim on the property with the representatives of the claimant, they did not dispute the fact that it was a bona fide new position. They took the position, however, that since the Carrier had paid a rate of $198.76 per month during the transition period or the time between the introduction of the machines in April and the date the new positions were established, bulletined and then filed on March 4th, 1946, by so doing the higher rate had automatically become established for all time to come which position the Carrier believes is untenable and, therefore, will not be supported by your honorable Board.

As stated in the Carrier's statement of facts, after the machines were installed considerable time was necessary in order to determine the various clerical assignments essential under the machine system and to determine the proper rates of pay to be applied to such assignments. This period of time extended for approximately nine months during which time no rate adjustments were made or attempted. The fact that in excess of nine months were required to determine the necessary and proper assignments under the machine system was not, in our opinion, excessive or in any way detrimental to the employes. On the contrary, Employe Rosenberger, for example, benefited to the extent of $18.76 per month during the entire transition period.

The Carrier believes your honorable Board will not dispute its right to abolish and establish positions when it is necessary and done on a legitimate basis and to fix salaries on such new positions as may be established provided due consideration is given to applicable rules. Furthermore, we believe you will agree with the principle that there is no agency better qualified to determine the number and kind of positions that are necessary to the successful operation of a railroad than the management of that particular railroad.

We hold the changes made in the Pay Roll Accounting Department due to the introduction of the machine system were proper in every detail and in the absence of any showing that there were violations of rules committed by the Carrier in the establishment of the new positions or the rates of pay, it is our contention that the claim is without merit and should, therefore, be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: On February 23, 1946, eleven positions existed in the Carrier's Pay Roll Accounting Department of its general office at Duluth, Minnesota, all handling time keeping work. By bulletin of that date the Carrier declared these eleven positions, including the one of Car Shop Timekeeper here involved, rate $198.76 per month, abolished as of March 4, 1946. In the same bulletin it noticed the creation of and advertised for bids on eleven new positions, including what it termed Clerk Position No. 3, Deductions, Vacations, etc., Rate $180.00 per month. The Claimant, the then occupant of the Car Shop Timekeeper position, applied for and was assigned to the newly advertised position.

Prior to the action just related the Carrier, in April 1945, had installed Burroughs Accounting Adding Machines and the McBee Key Sorting System in its Pay Roll Accounting Department. As a result the timekeeping work, including the posting of daily time slips, the making of pay rolls and related accounting was almost completely mechanized whereas it had therefore been performed manually. The parties are not in accord as to the reason for it but agree the fact is that from the month and year last mentioned up to

March 4, 1946, all positions were left as they were before the mechanized change with the same rates of pay, regardless of whether the work performed during the period of time compared in importance, kind or class with the work of the position prior thereto.

Based on the foregoing facts the petitioner asserts rules of the working Agreement were violated and claims (1) the Carrier wrongfully created the position of Clerk, Deductions and Vacations, at its present rate of pay, (2) the correct rates for such position on the day it was established was $198.76, and (3) pay at $18.76 per month, the difference between the old and the new rate of the two positions in question from March 4, 1946.

Obviously, the right of the Carrier to make improvments in the methods of performing its work cannot be denied. Nor can it be doubted that upon installation of the mechanized system requiring a change in its operational set up it had the right and could abolish established positions not necessary to the efficient operation of its business and create new ones by reason of the exigencies of the prevailing situation. Even so the changes last referred to must be made in conformity with the working Agreement between the parties and if they are made without complying therewith the Carrier's astion results in a violation of that contract. By the same token unless authority is found in the rules for precluding action taken in connection with such changes the Carrier's action with respect thereto must be upheld.

What is the situation here as disclosed by the record? There was an Agreement covering work of clerks and governing the hours of service and working conditions of the employes involved in the Carrier's change from a manual to a mechanized system. That change, however accomplished, all had to do with a similar class of work and involved employes who were engaged in its performance. The Carrier made the change and left all positions and their rates of pay just as they were for a period of almost a year. Then without conference, negotiation, or agreement it abolished the old positions, created new positions, and established new and lower rates of pay. Directly applied to the position instantly involved that, quoting the Carrier's own language, resulted as follows: "When the payroll accounting was performed manually, all payroll deductions and vacation records were handled by the respective timekeepers, numbering eight to ten. Under the machine system it was considered desirable and more advantageous from the standpoint of expediting the work to assign one person to handle all deductions and vacations for all departments. This was accomplished by the creation of the position of Deduction and Vacation Clerk."

Thus it appears that by its unilateral action the Carrier abolished several Timekeepers' positions, including one which the Claimant had a regular assignment and created one new Timekeeper's position at a reduced salary to cover all Timekeepers' work. True enough, the position was given a new name and assigned new duties but even so its class of work was the same and some of its duties were identical in character with those theretofore performed by Claimant. The practical result was to reclassify the old position and reduce its rate of pay. In full force and effect at the time all this was taking place was Rule 38 (b) of the contract, which reads:

> "(b) Established positions shall not be discontinued and new ones created under a different title covering relatively the same class of work for the purpose of reducing the rate of pay or evading the application of these rules."

This Division of the Board has heretofore announced the principles which govern a situation such as has been described in the preceding paragraphs of this Opinion. Long ago in Award 864 we said:

> "The agreement is clearly applicable to certain charcter of work and not merely to the method of performing it. To hold other-

wise would operate to destroy collective bargaining agreements. Improved methods have no more effect upon such agreements than such agreements have upon the right of the carrier to install such methods. Certainly no one would question the right of carriers to make improvments in methods of performing work and we think it is equally true that improved methods do not operate to take the work out from under contracts with employes performing same. The teletype is simply a new and improved mechanical device used for the performance of the same work theretofore performed by the use of Morse instruments."

Paraphrasing the last sentence of the preceding quotation, the "Burroughs Accounting Adding Machines and the McBee Key Sorting System are simply new and improved mechanical devices used for the performance of the same work theretofore performed by manual accountants." Thus it appears methods of performance do not change the class of work properly belonging to a position.

That the principle enunciated in Award 864 has been followed and adhered to since its pronouncement is evidenced by our recent Award 3746 wherein the foregoing quotation is quoted verbatim. It should be noted, however, that in such Award the right of the Carrier to make essential changes and abolish positions was recognized, the decision being premised upon the proposition the Carrier had assigned work remaining in such abolished positions to members of a class other than those to whom it belonged.

We think, under the conditions and circumstances disclosed by the record, that if the Carrier desired to reduce the rate of pay of the new position it was required to negotiate such change and that not having done so it violated Rule 38 (b) of the Agreement when it changed the position and fixed its present rate of pay at the reduced rate without Agreement. The new position, as heretofore indicated, covered the same class of work, and "purpose of reducing the rate of pay", as that phrase is used in the rule, is evidenced by the fact the rate of the old established position was actually reduced by the Carrier's action. Moreover, the fact the old positions were continued in existence for approximately nine months and performed all work required under the new set up if it does not create a presumption is at least of considerable probative value in determining the motive and purpose responsible for the creation of the new positions.

In the face of the record before us we are not prepared to adopt petitioner's position, strenuously urged, that the temporary operation under the new set up from April 1945 to March 4, 1946, under the old positions and at their rate of pay resulted in the establishment by the Carrier of new positions during that period of time. Neither can we say, as is also contended, there was a violation of Rule 9 of the Agreement for failing to bulletin new positions until February 23, 1946.

By reason of the violation of the Agreement as herein stated this Division of the Board holds the Carrier is obligated to pay the difference between the rate of pay of the position of Car Shop Timekeeper in force and effect on the date the Carrier discontinued such position and that paid for the position of Clerk, Deductions and Vacations until such time as the rate of the latter position is changed in conformity with the Agreements.

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 employe 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 Agreement.

AWARD

Claim sustained as indicated in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST; A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 9th day of August, 1948.