

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 NEW YORK, NEW HAVEN AND HARTFORD RAILROAD
COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that the Carrier violated the Clerks' Agreement:

(1) When, effective December 2, 1946, through bulletin No. 86 issued November 27, 1947, if abolished established positions of Record Clerk, rate \$8.71 per day, and created in lieu thereof positions identified as IBM Assistant Train Clerk, rate \$8.21 per day, Key Punch Operator, rate \$8.01 per day and Assorting Machine Operator, rate \$8.01 per day, and

(2) That the three (3) positions established and rated as IBM Assistant Train Clerk shall now be classified as Train Clerk and rated \$8.76 per day effective December 2, 1946, and

(3) That the thirteen (13) positions established and rated as Key Punch Operators and the two (2) positions established as Assorting Machine Operators shall all now be rated at \$8.71 per day effective December 2, 1946, and

(4) That all employes adversely affected by reason of this violation be compensated for wage loss suffered retroactive to December 2, 1946.

EMPLOYES' STATEMENT OF FACTS: Prior to December 2, 1946 the force at the General Yard Office, Cedar Hill, among others included the following positions and rates of pay:

Classification	Daily Rate	Hours of Assignment			Total
		8 AM to 4 PM	4 PM to 12	12 to 8 AM	
Record Clerk\$8.71	6	3	4	13

International Business Machines were installed in the General Yard Office at Cedar Hill prior to November 1946, the work performed by Record Clerks being transferred to such machines, and in connection therewith the carrier in fact abolished the above positions and on November 27, 1946 issued Bulletin No. 86 advertising the following positions in lieu thereof:

Classification	Daily Rate	Hours of Assignment			Total
		8 AM to 4 PM	4 PM to 12	12 to 8 AM	
IBM Train Clerk	\$8.76	1	1	1	3
IBM Asst. Train Clerk 8.21	1	1	1	3
Key Punch Operator	8.01	4	5	4	13
Assorting Mch. Opr.	8.01	1	—	1	2
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(3) the carrier had an obligation to fix the rates of the new positions because there were no similar positions within the same seniority district,

(4) the carrier has fully discharged its obligations under the Railway Labor Act to endeavor in good faith to negotiate with the employees to arrive at a rate for the positions which would be mutually satisfactory,

(5) the carrier, in assigning to the new positions of Key Punch Operator and Assorter Machine Operator the Yard Clerks' rate of \$8.01, and in establishing a differential in rates between the positions of IBM Train Clerk and IBM Assistant Train Clerk, the same as the existing differential in the rates for the positions of Train Clerk and Assistant Train Clerk, which the positions of IBM Train Clerk and IBM Assistant Train Clerk most closely resemble, cannot be said to be so arbitrary or capricious as to constitute a possible violation of the carrier's duty to negotiate in good faith.

The Board is respectfully petitioned to so find and to decline the claim in its entirety.

(Exhibits not Reproduced.)

OPINION OF BOARD: Prior to December 2, 1946, several positions of Record Clerk existed at the General Yard Office, Cedar Hill, rated at \$8.71 per day. In November 1946, International Business Machines were installed and the work of Record Clerks was transferred to these machines. The Carrier thereupon abolished the positions of Record Clerk and bulletined the following positions and rates in their stead: 3 IBM Train Clerks, \$8.76; 3 IBM Assistant Train Clerks, \$8.21; 13 Key Punch Operators, \$8.01; and 2 Assorting Machine Operators, \$8.01. The Organization contends that the IBM Assistant Train Clerks shall be classified as Train Clerks and rated \$8.76 per day and that the Key Punch and Assorting Machine Operators shall be rated at \$8.71 per day.

The following rules bear upon the proper decision of the dispute:

"Established positions shall not be discontinued and new ones created under a different title covering relatively the same class of work which will result in reducing the rate of pay or evading the application of these rules." Rule 11, current Agreement.

"Positions (not employees) shall be rated and the transfer of rates from one position to another shall not be permitted except as provided in Rule 10." Rule 60, current Agreement.

"The wages for new positions shall be in conformity with the wages for positions of similar kind or class in the seniority district where created." Rule 64, current Agreement.

We think the evidence discloses that these employees were performing work of a similar kind and class as formerly performed by Record Clerks. The fact that improved mechanical facilities have been introduced does not change the kind or class of work being done. Awards 1092, 1861. To make Rule 11 applicable, it is not necessary that the services rendered are identical with the former position. In the present case the employees were doing the same work in a different manner. It was similar as to kind or class within the meaning of Rule 11.

The contention of the Organization that the IBM Assistant Train Clerks were performing the same work as IBM Train Clerks cannot be sustained. The Carrier having placed some supervisory duties on the IBM Train Clerks, they have shown sufficient justification for rating them higher than IBM Assistant Train Clerks. However, the IBM Assistant Train Clerks are entitled to the former rate of Record Clerks as a minimum rate under Rule 11.

We sustain the claim of IBM Assistant Train Clerks to the extent of \$8.71 per day and the claims of Key Punch and Assorting Machine Operators as made.

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.

. **AWARD**

Claim sustained as per Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary.

Dated at Chicago, Illinois, this 11th day of August, 1948.