

Award No. 4113  
Docket No. CL-4143

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
**THIRD DIVISION**

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**PARTIES TO DISPUTE:**

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

**DETROIT, TOLEDO AND IRONTON RAILROAD COMPANY**

**STATEMENT OF CLAIM:** (1) Claim of the System Committee of the Brotherhood that the Carrier violated its agreement with the Brotherhood when, on May 14, 1947 by Bulletin 6, it advertised a new position under the title of "Car Record Clerk" with rate of \$7.31 per day, same being incorrectly classified and improperly rated, and

(2) That by reason of such violation, the Carrier, by appropriate award and order, shall now be required to compensate Mrs. Lillian Ernest, regularly assigned Car Record Clerk with seniority date of December 17, 1945, for the difference between her total earnings as Car Record Clerk and the total earnings paid Mrs. Romaine Schlaack (except for such time that Mrs. Schlaack was not on duty) and/or the total earnings paid to any other employe occupying the position as advertised under Bulletin 6, for

(a) The period May 26, 1947 thru July 11, 1947

(b) The period covering all time subsequent to July 11, 1947 and continuing until such time as the violation has been corrected.

**EMPLOYES' STATEMENT OF FACTS:** The Carrier issued the following bulletin on May 14, 1947:

"Clerks' Agreement      Seniority District No. 3      Bulletin No. 6  
Dearborn, Michigan  
May 14, 1947

To Employes Concerned:

The following position is hereby bulletined for bids in accordance with Rule 9 of Clerks' Agreement. Bids will be accepted by the undersigned up to **9:00 A. M., May 21, 1947**. Bids must be submitted on **Form M-111**.

Location <b>General Office Dearborn</b>	Title of position <b>Car Record Clerk</b>
Daily rate of pay <b>\$7.31</b>	Beginning date <b>Within five days after 5/21/47</b>

Hours of assignment **8:30 A. M.-5:00 P. M.**

Assigned day of rest <b>Sunday</b>	Meal Period Assignment <b>12:45 P. M.-1:15 P. M.</b>
Brief description of duties:—	Duration <b>Indefinite</b>

Note: Promotion as used in this rule relates only to positions covered by this agreement."

Mrs. Schlaack worked on four other positions besides the one she bid in, viz., Waybill Sorting Clerk, Stenographer, Mail Girl, and P. B. X. Switchboard Operator. The period of time on any one of these positions did not at any time constitute more than a short vacancy for each was less than 30 days. We recognized the principle in Rule 8 and did so religiously. There was positively no one in the office working on a lower rated position who actually wanted to work on any one of these positions and who had the seniority, fitness and ability to perform the duties of any of these positions except that of Mail Girl which had the lowest rate in the office.

Following are two quotations from your Board's Award No. 3273:

"After the Carrier has determined that a senior applicant lacks sufficient fitness and ability, the burden is upon such applicant to establish that he possessed reasonably sufficient fitness and ability to occupy the position."

"Whether an employe possesses sufficient fitness and ability for a position within the meaning of the rule is a matter exclusively for the Carrier to determine and such a determination once made will be sustained unless it appears that the action of the Carrier was capricious or arbitrary."

The actions of this Carrier have never been "capricious or arbitrary." It has endeavored always to adhere closely to all the terms of the contract with its employes.

Certainly Mrs. Ernest, the person for whom the Brotherhood is claiming compensation, could not have held the positions of Waybill Sorter, P. B. X. Switchboard Operator or Stenographer. She has been with us over two years, but (and we state this with all kindness) she is not yet a good Car Record Clerk. She is 45 years of age and very slow in adapting herself to new work. In addition to this she has had domestic troubles which have greatly affected the caliber of her work.

(3) It appears that the Brotherhood is claiming that the Carrier violated its agreement when it advertised the position of Car Record Clerk, on the grounds that the position was incorrectly classified and improperly rated. We cannot find a shred of evidence to support their position. Mrs. Schlaack had already been with the Carrier about one month and a half during which time she did nothing but the work of a Car Record Clerk with the exception of 2 days work on May 2 and 3 when she assisted the Waybill Sorter. There was no reason to expect that Mrs. Schlaack would not continue to work as she had done and the bulletin referred to in the complaint was issued. One not gifted in the art of clairvoyancy could not hope to forecast that certain persons would be ill on certain days or that others would ask for leaves of absence. We were unaware that these various jobs would turn up. The General Auditor, E. H. McCauley, met each situation as it arose by filling each short vacancy in accordance with the rules.

When he originally advertised the position of Car Record Clerk on May 14, 1947, he did so in strict accord with the Agreement.

**CARRIER'S CONCLUSIONS:** The Carrier, we believe, has conclusively proved that it did not violate and had no intention of violating its Agreement with the Brotherhood.

Your Honorable Board is respectfully requested to deny the claim.

Exhibits not reproduced.

**OPINION OF BOARD:** The circumstances from which this claim develops indicate that there was conflict with provisions of the Agreement, and

the claim accordingly should be sustained. Memorandum of Understanding No. 7 however precludes allowance of compensation for the period immediately preceding 30 days prior to the date, August 11, 1947, that the claim was first presented in writing to the designated official of the Carrier.

**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 employes 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 action of which complaint is made was contrary to the Agreement

#### AWARD

Claim sustained for compensation as presented in item (2) for the days worked by Mrs. Romaine Schlaack on positions with rate of pay higher than that of Car Record Clerk (\$7.31 per day) in the period July 12, 1947 to October 28, 1947, the date of Mrs. Schlaack's severance from the service of the Carrier.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: A. I. Tummon  
Acting Secretary

Dated at Chicago, Illinois, this 17th day of September, 1948.