

Award No. 4147
Docket No. CL-4068

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Francis J. Robertson, Referee

PARTIES TO DISPUTE:

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

**THE CHICAGO, ROCK ISLAND & PACIFIC RAILROAD
COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that Stenographer-Clerk position, Superintendent's Office, Ft. Worth, Texas, be increased from \$213.70 to \$223.70 per month, effective January 1, 1947, and employee affected be paid for all monetary loss. (Increase of \$31.62 per month, effective September 1, 1947, to be added to the above rates).

EMPLOYEES' STATEMENT OF FACTS: An Agreement bearing an effective date of August 2, 1945, as to rules and working conditions, is in effect between the parties to this dispute.

December 31, 1946, position of General Clerk, Superintendent's Office, Ft. Worth, rate \$223.70, was discontinued, and the work from the General Clerk position was re-assigned as per the following statement furnished the Division Chairman by the Superintendent:

"Ft. Worth—December 12, 1946
FILE-263

Mr. J. Stanfield
Division Chairman, Clerks
Ft. Worth

Attached is copy of notice to Mr. C. Y. Rone, notifying him of discontinuance of position of General Clerk as of December 31.

Also attached is statement showing proposed distribution of the remaining work.

Although the tabulation is based on 204 hours, there are many items, of course, which have considerably decreased in volume.

Please advise if any conference is desired regarding distribution of the work.—(signed) C. C. Cunningham."

Statement:

"Ft. Worth, Texas, Dec. 12, 1946

Title of Position	General Clerk	Incumbent	C. Y. Rone
Station	Office	Monthly	
Location	Ft. Worth	Rate Pay	\$223.70
Assigned	8-12 Days per	Supt's.	Date position
Hours	1-5 Week	six	to be abolished
			12-31-46

position or positions from which it originated. Prior to the addition of the General Clerk position, the personal record work was handled by the Stenographer-Clerk; therefore in accordance with the rule, the work should flow back to the position from which it came and no adjustment in pay rate is in order in such a reassignment of work.

We respectfully petition the Board to deny the claim.

OPINION OF BOARD: The essential facts in this case are not in dispute. December 31, 1946 the position of General Clerk, rate \$223.70 per month, Superintendent's Office, Fort Worth, was discontinued and the work of the position reassigned to other positions. A major portion of the work was assigned to the position of Stenographer-Clerk, rate \$213.70 per month.

The Employees claim that the Stenographer-Clerk should receive the rate of \$223.70. They rely on Rule 69 and interpretations thereof which read as follows:

"RULE 69. ADJUSTMENT OF RATES. Established positions will not be discontinued and new ones created under different titles covering relatively the same class of work for the purpose of reducing the rate of pay or evading the application of these rules.

When there is a sufficient increase or decrease in the duties and responsibilities of a position or change in the character of the service required, the compensation for that position will be properly adjusted.

NOTE: The word 'sufficient' is interpreted as meaning 'of such a degree as to justify an adjustment in the rate of pay.'

Interpretation: 1. The right of the carrier to abolish a position is unquestioned; however, where there are two or more positions having the same hours of assignment and the same classification and rates of pay and a position of that classification is to be abolished, it shall be the one held by the junior employee; where rates of pay of such positions are not the same, the lowest rated position of that classification will, so far as possible, be discontinued.

Interpretation: 2. When discontinuing a monthly rated position, a statement will be furnished the Local and Division Chairmen as much in advance of abolishing a position as possible, indicating remaining work on the position and proposed distribution of such remaining work, it being understood that the remaining work will, so far as possible, be returned to the position or positions in the station, yard or office from which it originated.

If the Division Chairman agrees to distribution of the remaining work, he will so advise the employing officer. However, if a conference is requested by the Division Chairman regarding distribution of the remaining work, such conference will be held within the time limit provided for in Rule 25-b, unless another date is mutually agreed to between the employing officer and the Division Chairman. At the expiration of the period of notice the carrier may make the proposed changes, subject to the right of the committee to proceed as in the case of any other dispute."

Employees assert that under Interpretation 1 cited above the position of stenographer-clerk should have been abolished and its work redistributed to the General Clerk's position which should have been retained. We cannot agree with this contention for it does not appear that the two positions were in the same classification as contemplated by that interpretation.

This then brings us to a consideration of the effect of the second paragraph of Rule 69. In this respect it appears that the Carrier has conceded that some adjustment is warranted. In letter dated June 23, 1947 to the General Chairman, Carrier's Manager of Personnel, said, "We are agreeable

to making some reasonable adjustment in this case, but not to the extent requested by you." Carrier in its submission argues that the Board should not consider this statement because it was an offer of compromise and it having been rejected, the same is no longer binding. We do not view such statement as an offer of compromise. It is simply an admission that something is due but makes no offer to agree upon an amount and we believe that it is perfectly proper for us to consider that statement in arriving at a decision in this case. What should the amount of the adjustment be? Generally speaking, we have held to the view that it is not the function of this Board to set new wage rates for new positions unless, of course, there is some rule in the agreements involved which provides a norm or standard for the setting of such rates. However, we have upon occasion, in situations such as this and under similar rules where conferences have been held and we felt that there was some evidence in the record by which we could be guided, undertaken to set increased wages upon the transfer of higher rated work to a lower rated position.

The controversy over the increased rate seems to center around the transfer of certain personal record work which appears in the record as constituting about 45 hours per month, although the Carrier at first estimated it to be eighty and then indicated that that was an error. The Carrier's explanation of the error is extremely plausible and is entitled to weight in considering this question. The record is replete with contention and counter contention reviewing history of transferring personal record work back and forth from one position to another, the Employees contending that it was part of the duties of higher rated jobs than Stenographer-Clerks and the Carrier that it was not. Both parties point to historical facts to support their contentions. With this we are little concerned. What was assigned to a job abolished fifteen years ago is not much help in determining the current evaluation of work. There is little doubt that this personal record work constituted a substantial part of the duties of the higher rated position and when it was transferred to the lower rated position an increase was in order as admitted by the Carrier. To refer this matter back to the parties for further negotiation would appear to us to be a vain act. In view of all the circumstances we feel that the added duties in the position of Stenographer-Clerk warranted an increase of \$4.00 per month.

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 an increase of \$4.00 per month should be granted effective January 1, 1947 in the rate of the Stenographer-Clerk position Superintendents' office Fort Worth.

AWARD

Claim sustained to the extent indicated by opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 22nd day of October, 1948.