

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

H. Nathan Swaim, 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:

1. That the carrier violated the Clerks' Agreement when from January 1, 1947 to July 28, 1947, it assigned the work of the position of Compensation and Distribution Clerk to Mr. John A. Bauers, regularly assigned to the position of Supervisor of Machine Operations by bulletin, and

2. That Mr. Morgan C. Sweeney, who performed the work of the position of Supervisor of Machine Operations from January 1, 1947 to July 28, 1947, shall now be reimbursed in the amount of \$25.00 per month during the period the violation continued to exist, and

3. That Mr. Robert M. Sund and all other employees, who performed the duties of Supply Clerk-Machine Operator, January 1, 1947 to July 28, 1947, shall now be made whole for all wage loss suffered as a result of the violation.

EMPLOYEES' STATEMENT OF FACTS: From January 1, 1947 to July 28, 1947, Mr. John A. Bauers, who was regularly assigned by bulletin to the position of Supervisor of Machine Operations, Payroll Accounting Department, rate of pay \$241.50 per month, was not used in such capacity but was assigned, by management, to perform the work of Compensation and Distribution Clerk, rate of pay \$241.50 per month. This is the correct rate of pay for the work assigned Clerk Bauers.

During the period from January 1, 1947 to July 28, 1947, the work of the position of Supervisor of Machine Operations was performed by Clerk Sweeney, who had bid in and been assigned to the position of Supply Clerk-Machine Operator, rate of pay \$216.50 per month.

Clerk Sund performed the work of the position of Supply Clerk-Machine Operator from January 1, 1947 to May 13, 1947. His rate of pay was \$191.50 per month. On April 28, 1947 he protested that this was an incorrect rate of pay for the work assigned and was removed from the position on May 13, 1947.

On July 28, 1947, the carrier abolished the position of Supervisor of Machine Operations.

POSITION OF EMPLOYEES: There is in evidence an agreement between the parties bearing effective date of January 15, 1947 from which the following rules thereof read:

The foregoing statement is made merely to show that neither of the claimants actually suffered a money loss.

In conclusion, it is the understanding of the Carrier that the claims of Employees Sweeney and Sund are based on an alleged violation of Rule 36 (b) which reads:

"Employees temporarily or permanently assigned to higher rated positions shall receive the higher rates while occupying such positions; employees temporarily assigned to lower rated positions shall not have their rates reduced. The rate of pay of an employee will not be changed when filling the position of an employee off on sick leave who is receiving pay."

The Carrier has shown conclusively that neither of the claimants were assigned either temporarily or permanently to **higher rated** positions, and we challenge them to produce under oath a statement to the effect that anyone in authority at any time during the period of these claims instructed either claimant to assume the duties of the position for which they are seeking the rate of pay. Therefore, the Carrier respectfully requests that the claim of Employees Sweeney and Sund be denied.

(Exhibits not Reproduced.)

OPINION OF BOARD: The claim of the Organization is that (1) during the period January 1, to July 28, 1947, employee John A. Bauers, who was regularly assigned to the position of Supervisor of Machine Operations in the Payroll Accounting Department, was assigned the work of the position of Compensation and Distribution Clerk; that (2) during the same period employee Sweeney, regularly assigned to position of Supply Clerk-Machine Operator, performed the duties of the position of Supervisor of Machines, a higher rated position, should be paid \$25.00 per month the difference in the rate; and that employee Sund, regularly assigned to a position in the preparatory section of the Payroll Accounting Department rate \$191.50 per month, and all other employees who during the same period performed the duties of Supply Clerk Machine Operator, a higher rated position shall now be made whole for all wage loss suffered.

This entire controversy arose during a period when the Carrier was changing its Payroll Accounting Department to a manual system from machine operation which had proved unsatisfactory. It appears to be established from the record that in this change from machine to manual operation most of the duties of the position of Supervisor of Machine Operations had ceased to exist by the end of March, 1947, and that after March 10, 1947, Bauers was assigned completely to duties other than the duties of his regularly assigned position but that the duties he actually performed were not of a higher rated position. During the entire period in question, however, Bauers continued to draw the pay of the position of Supervisor of Machine Operations and was carried on the records of the Carrier as being regularly assigned to that position.

While the Carrier may have failed to comply strictly with the Rules of the Agreement by assigning work of the position of Compensation and Distribution Clerk to Bauers while he was regularly assigned to the position of Supervisor of Machine Operations, the work so assigned was not of a higher rated position, there is, therefore, no claim for compensation for Bauers and any violation involved in Claim (1) ceased when on July 28, 1947, the position of Compensation and Distribution Clerk was bulletined and filled under the Agreement rules. This part of the claim is, therefore, now moot and should be dismissed.

The burden was on the Organization to show that Claimants Sweeney and Sund and others performed the duties of higher rated positions during the period in question.

The Organization has attempted to show this by (1) the general statement of Bauers to the effect that he only worked the position of Machine

Supervisor a few days of the period and "some other clerks had to work the position" and (2) the general statements of Heim and Sullivan to effect that to the best of their knowledge and belief Sweeney and Sund were performing the work of the higher rated positions as claimed. There is no statement by either of the two claimants as to what duties they were performing during the period. Nor is there any statement by the Organization as to the specific duties the two claimants were performing.

On the other hand the Carrier lists the specific duties of the positions to which the two claimants were regularly assigned and the specific duties which they performed during the period. The duties so listed as having been actually performed did not include the duties of higher rated positions as claimed by the Organization. The Carrier made the written statement of C. W. Rosen, Pay Roll Accountant and of John Bauers as to the facts a part of the record. That statement said that Sweeney was not instructed to perform and did not perform any of the duties attached to the Supervisor Position.

In view of the above we are of the opinion that the Organization has failed to sustain the burden of proof as to Claims (2) and (3).

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

Claim (1) presents a moot question and should be dismissed.

The Carrier did not violate the agreement as claimed in Claims (1) and (2).

AWARD

Claim (1) dismissed.

Claims (2) and (3) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 24th day of November, 1948.