

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 that the carrier violated the Clerks' Agreement:

1. When on November 25, 1945, it reduced the rate of pay of the position of Train and E. & F. Timekeeper, Missabe Division, from \$233.76 per month to the rate of \$203.76 per month.
2. When it did on March 4, 1946, nominally abolish the position of Train and E. & F. Timekeeper, Missabe Division, and assigned the duties of the position to Paul H. Haglund, Train and E. & F. Timekeeper, Iron Range Division, and
3. That Willard J. Beron who performed the work of the position from November 25, 1945 to March 4, 1946 shall now be made whole for all wage loss suffered and,
4. That Paul H. Haglund who performed the work of the position from March 4, 1946 to February 1, 1947 shall now be made whole for all wage loss suffered.

EMPLOYES' STATEMENT OF FACTS: For many years prior to November 25, 1945, there existed in the Payroll Accounting Department a position titled Train and E. & F. Timekeeper, Missabe Division.

The duties of the position consisted of the following:

- Check time slips.
- Enter pay on machine tickets.
- Enter locomotive mileage on machine tickets.
- Figure running time of Engines.
- Post locomotive mileage.
- Figure withholding tax and pension deductions.

The agreed upon rate of pay for the position was, until November 25, 1945, \$233.76 per month. On November 25, 1945, the carrier, by unilateral action reduced the rate to \$203.76 per month. The same employe namely, Williard J. Beron continued to perform the work of the position, which remained the same as prior to November 25, 1945.

On March 4, 1946, the carrier issued a bulletin abolishing the position. After nominally abolishing the position the carrier found it necessary to continue to fill the position and did place thereon, Paul H. Haglund, Train and E. & F. Timekeeper, Iron Range Division.

Rule 37

"(a) Rates of pay for positions covered by this agreement which are now in effect shall become a part of this agreement and shall remain in effect until changed by mutual agreement between the parties hereto.

(b) Employes temporarily or permanently assigned to higher rated positions shall receive the higher rates while occupying such positions; employes temporarily assigned to lower rated positions shall not have their rates reduced. This not to apply in cases where positions vacated by employes on vacation or sick leave and under pay are being filled."

Rule 38 (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."

The Carrier cannot agree that the foregoing rules were violated as to do so would be to admit that before any position could be abolished, every single unit of the duties attached to it would have to be completely discontinued. We do not find conclusive support for such a conclusion in any ruling or decision by any tribunal.

As stated in the Carrier's Statement of Facts, Claimant Haglund was assigned to check some hourly paid time slips on the Missabe Division, but this was a small part of the less important duties of the position of Assistant Train and Enginemen's Timekeeper, Missabe Division, as they existed prior to the advent of the machine system as well as being a very small part of his total duties during the period of this claim. As previously shown, the machine system of accounting actually wiped out seventy-five per cent or more of the duties of this position, and, as a matter of fact, the same was also true with respect to the position of Assistant Train and Enginemen's Timekeeper, Iron Range Division, held under the manual system by Claimant Haglund. Notwithstanding this fact, the Carrier continued to pay him the rate of the position not only through the transition period but continued to do so until the posting machines were abandoned insofar as train and engine-men's payrolls were concerned on February 1st, 1947.

In conclusion, it is the belief of the Carrier that it has every right to abolish a clerical position when the need for such position substantially disappears. Further, that it is not improper to assign, as in this case, the small remaining duties of a clerical position to other clerical employes working in the same seniority group. It is our further contention that when a position is abolished and there remains, as in this case, a small amount of the duties of such position to be assumed by others in the same seniority group, it is not mandatory upon the Carrier that the rate of the abolished position be maintained when the position is disposed of in accordance with agreement rules.

The Carrier respectfully requests that the claim of Employe Haglund cannot be sustained.

(Exhibits not reproduced.)

OPINION OF BOARD: The claims in this case involve the period of time between April, 1945, when the Carrier installed accounting machines in its Payroll Accounting Department to July 28, 1947, when the Carrier, having converted the Department again to manual operation, again re-established the positions and rates therefor which were in effect before the machines were installed.

While the Organization and the Carrier are in utter disagreement as to many of the facts, and each seems satisfied to rest its case on its own assertions as to the facts without proof by verified, or even written, statements

of individuals who would be in a position to personally know the facts, or by records, an examination of the entire record, including all of the contradictory statements of the parties, leads us to believe that the following is a fairly accurate statement of the factual situation.

In April, 1945, the Carrier introduced machines into its Payroll Accounting Department, the operation of which up to that time had been manual. The change from manual to mechanical operation of the Department necessarily involved changes in the duties of the employes of the Department but the performance of their changed duties by all of the employes of the Department achieved the same final accounting results under mechanical operation as had the performance of the employes' combined duties under manual operation.

During the period from the installation of the machines to March 4, 1946, no positions were abolished and, at least theoretically, the rates of the positions remained unchanged.

The Claimant, Willard G. Beron, who was holding the position of Assistant Train and Enginemen's Timekeeper, Iron Range Division, Rate \$233.76 per month in April, 1945, continued as the employe regularly assigned to that position and continued to draw the rate of that position until November 26, 1945, when his pay was reduced to \$203.76 per month.

The Carrier explains this reduction by saying that at that time Claimant Beron was relieved by Dickinson, a senior employe who then returned from a leave of absence and that Claimant Beron in turn exercised his seniority to a lower rated position which paid only \$203.76 per month.

It seems to be admitted that the duties of Beron after he was so "relieved" by Dickinson were exactly the same as they had been since April, 1945, when the machines were installed. When a senior employe by the exercise of his seniority claims a position it is certainly intended by the Seniority Rules that he shall take over the duties which the occupant of that position is then performing as the work of that position. The Carrier did not cause Dickinson to do this.

No rule of the Agreement permits the Carrier to transfer the pay of a position to a senior employe without at the same time transferring the work of the position.

Rule 36 of the Agreement of the parties which became effective April 16, 1941, and which was in effect on November 26, 1946, expressly provided that:

"Positions (not employes) shall be rated and the transfer of rates from one position to another shall not be permitted."

The reduction of the pay of Claimant Beron constituted a violation of the Agreement.

The Organization in this case also claims for employe Haglund, regularly assigned to the position of Assistant Train and Enginemen's Timekeeper, Iron Range Division, the difference between the rate of pay of that position and the rate of the position of Assistant Train and Enginemen's Timekeeper, Missabe Division, for the period from March 4, 1946, the date the latter position was abolished, to February 1, 1947, when the machine system was discontinued insofar as train and enginemen's payroll accounting was concerned.

The Carrier continued to pay Claimant Haglund the rate of the position to which he was regularly assigned during all of the time the machines were being used, i.e., until February 1, 1947.

Carrier admits that after the Missabe Division Timekeeper position was abolished some of the duties of that position were assigned to and performed by Claimant Haglund on his Iron Range Division Timekeeper position. The Organization contends that all of the duties of the Missabe Division position were assigned to and performed by Claimant Haglund as long as the mechanized operation continued. If this be true, the Carrier, in effect, assigned Claimant Haglund to a higher rated position during the period of his claim

and under the provisions of Rule 37 of the then effective Agreement (Rule 36 of the Current Agreement) should have paid Claimant the higher rate.

Statements of both parties convince us that it is substantially correct to say that Claimant was assigned and performed the duties of the Missabe Division position from March 4, 1946 to February 1, 1947.

The Carrier in listing the duties of the two positions lists the duties of the positions while the Department was operated manually before the machines were installed. In speaking of the duties of the Missabe Division position which Claimant took over we must assume that Carrier was speaking only of the duties which were considered as belonging to the position under manual operation. When Carrier speaks of seventy-five per cent of the duties of each position being eliminated with the advent of the machine system we must also assume it is speaking of the duties of the positions as they existed under manual operation.

The record contains no positive statement by the Carrier as to the exact duties being performed by the occupants of the two positions on March 4, 1946, a year after the machines were installed. Nor do we find a clear, positive statement by the Carrier that the duties being performed on March 4, 1946, by the employe then assigned to the Missabe Division position were not then assigned to and performed by the Claimant, Haglund. The Organization states positively that this was true.

The Rule here in question, 36 (b), 37 (b), states:

"Employees temporarily or permanently assigned to higher rated positions shall receive the higher rates while occupying such positions; * * *."

The Carrier, of course, could not avoid the effect of this rule by announcing that the higher rated position was abolished and then assigning the work thereof to an employe occupying a lower rated position. If this could be done, the Carrier in this manner could change rates of various positions unilaterally at will. The Agreement cannot be so interpreted.

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 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 Carrier violated the Agreements as claimed.

AWARD

Claims 1, 2, 3 and 4 are sustained.

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.