

Award No. 5412

Docket No. CL-5382

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Jay S. Parker, Referee

PARTIES TO DISPUTE:

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

ERIE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that the carrier violated the rules of the Clerks' Agreement at Hornell, N. Y. when it requires employe on position classified as Stenographer-Clerk rate \$218.32 per month, to possess equal qualifications with employe classified as stenographer—Rate \$233.32 per month, and thereby secure the performance of higher rated work at a lesser rate of pay, and,

That carrier shall establish a rate of \$233.32 per month on position of Stenographer and Clerk, retroactive to December 6, 1948, subject to adjustment on basis of the 40 Hour Week Agreement effective September 1, 1949. (File 898.)

EMPLOYEES' STATEMENT OF FACTS: During the year 1936 at which time the first Agreement between the Erie Railroad and the Brotherhood of Railway Clerks became effective, the status and title also rates of pay as they were then in effect were accepted by the Organization. At that time there were two (2) Clerks working on two (2) different positions in the Shop Foreman's Office, Hornell, N. Y. namely, in Title and Rate of Pay.

Miss Helen Donlon held the position of Stenographer at the rate of \$115.00 per month. Miss Helen Boyle held the position of Stenographer-Clerk at the rate of \$100.00 per month. Miss Donlon was a qualified Stenographer experienced in taking dictation by shorthand. Miss Boyle was not a qualified stenographers as she did not have training of any kind in taking dictation by shorthand. Miss Boyle was not at any time qualified as a Stenographer nor was it necessary at any time while she held the position of Stenographer-Clerk to qualify as a stenographer.

In 1943 Miss Donlon bid in a temporary position in the Master Mechanic and Shop Superintendent's Office at Hornell, N. Y. and her position was bulletined on a temporary vacancy basis as Stenographer, at that time, Miss Donlon moved to her new position and Miss Boyle, not being a qualified Stenographer was unable to bid in Miss Donlon's position and the position was assigned to a junior employe, a qualified Stenographer, namely, Miss Watt.

Miss Watt held the position of Stenographer for a period of about six months, when she was displaced by Miss Donnellan, another qualified Stenographer who was also junior to Miss Boyle. Miss Donnellan held the position

be a qualified stenographer the higher rate of position No. 1 is not paid simply because of stenographic ability but because that position is the leading clerical position in that particular office and performs other important work of a confidential nature for the Division Car Foreman and in general directs the office in his absence. Position No. 2, Clerk-Stenographer, has no such assigned responsibilities.

5. There is no agreement rule that prohibits the Carrier from showing the qualifications needed for a position.

6. In the dispute covered by Award 304 of your Board, the employes protested the inclusion in a bulletin of a detailed description of the duties of the position advertised and of the necessary experience applicants must have in order to qualify. Your Board denied the employes' protest in that case.

The Carrier denies violation of any rule and submits that the claim is without merit and should be denied in its entirety.

(Exhibits not reproduced.)

OPINION OF BOARD: On September 1, 1936, the date of the first Agreement between the parties, the Carrier had established and the claimant accepted, at their existing titles and rates of pay, two different positions, namely stenographer and stenographer-clerk, in the Shop Foreman's office at Hornell, N. Y., being the only positions of that character then, and now, required at that office. In the interim between such date and July 1, 1945 the parties negotiated an entirely new Agreement and supplemented it with at least one, and perhaps more, subsequent amendments without making any change in the rate of such positions. As of September 1, 1936 Miss Donlon, a stenographer experienced in taking dictation by shorthand, held the position of stenographer and Miss Boyle, who had no experience of that character and was not a qualified stenographer, held the position of stenographer-clerk. While the record is not clear on the point it appears Miss Boyle held the position until April 7, 1943. On that date it was bulletined by the Carrier, with the notation any applicant "must be qualified stenographer" and bid in by Miss Boyle who continued to hold it until July 1946 when, on account of her efficiency and notwithstanding her inability to take dictation by shorthand, she bid in and was awarded the position of stenographer under a bulletin stating that the successful applicant "must be experienced stenographer and touch method typist." That position was held by her until December 1948 when she resigned because of her marriage.

Due to Miss Boyle's change in assignment in 1946 a vacancy existed in the position she had been holding prior to that date. Thus it became necessary to again advertise the position of stenographer-clerk. This was done by bulletin, under date of July 1, 1946, which stated that any applicant for the position "must be experienced stenographer and touch method typist." Miss Watt, a qualified stenographer, was the successful applicant and subsequently assumed the duties of the position. When Miss Boyle resigned her position as stenographer in December 1948 Miss Watt was assigned to that vacancy and the position of stenographer-clerk was rebulletined on December 1, 1948, with the same requirement as to qualifications as had appeared in the July 1, 1946 bulletin. Under the record there can be no question that while Miss Boyle was assigned to the position of stenographer, the occupant of the stenographer-clerk position took what dictation the duties of the office required and that since that time the occupants of both positions are called upon to perform that type of service.

So far as the record discloses the two positions in question were maintained by the Carrier under the titles heretofore mentioned at a differential in wage rate of \$15.00 per month without protest on the part of the claimant until shortly after December 1, 1948, at which time the latter made objection and later filed a claim charging the Carrier was violating the rules of the current Agreement, in that it was requiring the employe classified as stenographer-clerk to possess equal qualifications with the employe classified as stenographer, thus securing the performance of higher rated work at a

lesser rate of pay and demanding the Carrier establish the then existing stenographer's rate of pay on the position of stenographer-clerk, retroactive to December 6, 1948.

Many of the facts heretofore related are not in dispute and have been set forth for purposes of giving readers of this Opinion a clear understanding of the existing factual situation and many of them are of little significance except for the fact they serve to clarify theories advanced by the parties, some of which have little, if any, bearing on the real issues involved. Facts which are controverted will be presently mentioned.

Although claimant advances divers theories as grounds for sustaining its claim it is clear its overall position is that the duties, possibilities, and qualifications of the stenographer-clerk position had been increased throughout the years to such an extent as to have the practical effect of discontinuing that position and creating in its stead a new position similar in kind and class to that of stenographer. Thus, since there can be little doubt that under our decisions there is merit to claimant's position if sustained by the confronting facts, it appears the all decisive question presented for our decision is factual in nature and must be determined upon that basis.

The first contention advanced by claimant in support of its position is that the original requirements on the position of clerk-stenographer merely required the incumbent to be a qualified stenographer "whereas the bulletins of July 1, 1946 and December 1, 1948, raised the requirements and qualifications of the position by requiring an applicant therefor to be an experienced stenographer and touch method typist," thus charging the position in fact so that it became a new position. There is no merit to this contention. Webster's New Collegiate Dictionary states that a stenographer is one skilled in, or employed to do stenography. It defines "stenography" as the art of writing in shorthand and subsequent transcription of shorthand notes, especially in typewriting. From these definitions it is clear the duties of the position of clerk-stenographer as originally established by the Carrier comprehended the work of transcribing shorthand notes on the typewriter by a qualified stenographer and that the elaboration as to qualifications included in the subsequent bulletins neither added to nor took anything from the duties of the position.

Next it is argued the fact Miss Boyle was permitted to remain in the position of stenographer-clerk without all the essential qualifications of a stenographer compels the conclusion that its duties did not include those of a stenographer even though such position had originally been established as such. We cannot agree. Positions, not employees, are rated and classified. It may well be that while Miss Boyle was occupying such position without proper qualifications a claim to reclassify as simply a clerk's position or a claim she was occupying it in violation of rules of the current Agreement and the rights of other employees who were qualified to hold it might have been proper. But that is not this case and it does not follow the mere fact she was permitted to so hold it in violation of rules of the then current Agreement compels or even permits a conclusion its duties were not those of a stenographer-clerk. By the same token it follows that in and of itself the subsequent assignment of a qualified stenographer to fill such position, as its classification required, did not result in an increase of its work.

Finally it is argued that viewed in its entirety the record discloses the duties and responsibilities of the stenographer-clerk's position have been increased as the years went by to such an extent its work and that of the stenographer are now identical with the result the Carrier has discontinued the position first mentioned and created a new position, i.e., stenographer so that now there are actually two positions of that kind and class in the office in question. The evidence on this point is highly conflicting. Summarized the Carrier's position is that although the incumbent of each position is required to be a qualified stenographer the higher rate paid the position of stenographer was not because of the qualifications respecting stenographic ability but due to the fact such position is the lead position in the office and in general the occupant thereof directs procedure in the absence of the

Division Car Foreman, whose jurisdiction extends over the Division, as well as performing other important work of a confidential nature developing in the office. On the other hand, the claimant insists the duties of both positions are the same. Both parties support their positions by evidence which cannot be reconciled. In such a situation all this Board can do, keeping in mind it has already determined that from the beginning both positions have always required qualified stenographers, is to survey the existing factual situation in the light of common knowledge, and on that basis determine the status of the position in question. When that is done, without laboring the conditions and circumstances responsible for our decision which would add nothing to the body of our reports and result in no benefit to the parties, we are constrained to hold the work of the involved positions is not equal and that the additional requirements imposed on the position of stenographer-clerk by the Carrier, if any, did not so increase its duties and responsibilities as to, in effect, discontinue that position or create a new one in lieu thereof in violation of existing rules of the current Agreement.

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 record facts do not support the claim and fail to disclose any violation of rules of the current Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 30th day of July, 1951.