

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Adolph E. Wenke, Referee

PARTIES TO DISPUTE:

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

THE COLORADO AND SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees:

(1) That Carrier violated rules of current Agreement effective July 1, 1924, when, on or about March 1, 1950 it discontinued position of Division Clerk, rate \$15.67 per day, Freight Traffic Department offices, Denver, Colorado, and concurrently therewith created position of Assistant Division Clerk, rate \$12.50 per day, to perform substantially the same work as that normally attached to the Division Clerk's position.

(2) That Carrier be required by an appropriate order from the Board:

(a) To restore the position of Division Clerk at the rate of pay established therefor by Agreement between the parties, namely, \$15.67 per day;

(b) To make an assignment of an employee to the vacancy of Division Clerk bulletined by Notice No. 71, March 1, 1950;

(c) That said employee be compensated for all wage losses sustained from March 1, 1950 to date assignment is made; and

(d) That all other employees who may have been affected by the promotion of the senior qualified applicant to vacancy covered by Notice No. 71 be likewise compensated for their wage loss sustained retroactive to March 1, 1950.

(Note: The reparations due individual employees is not ascertainable until Carrier bulletins the vacancies and makes assignments as they should have done when the vacancy of Division Clerk occurred on March 1, 1950).

EMPLOYEES' STATEMENT OF FACTS: Prior to March 1, 1950 there was established in the office of the General Freight Agent at Denver position of Division Clerk, rate \$15.67 per day, subject to all rules of our Agreement

only minor clerical and typing work left to be performed. We have also shown that the work now being performed by the so-called Assistant Division Clerk is principally typing of statements and manuscripts and minor clerical duties, therefore, when the work of the Division Clerk had been practically eliminated and only minor clerical work remained, it was not a violation of the Agreement to abolish such position and to create a different position performing only minor duties. This created position is not performing "substantially the same work as that normally attached to the Division Clerk's position."

The rate of pay established for the position of Assistant Division Clerk was created under the provisions of Rule 55, reading as follows:

"The wages for new positions shall be in conformity with the wages for positions of similar kind or class in the seniority district where created. If no position of similar kind or class exists in the seniority district where created, comparison shall be made with positions in other seniority districts."

There was no violation of Rule 63, reading as follows:

"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."

as the position of Division Clerk was abolished because the duties had been eliminated for reasons stated above and the new position is not performing substantially the same class of work. The employee who was assigned as Assistant Division Clerk has not been performing the same work as was assigned to the Division Clerk position. He is not capable of handling such work because of lack of experience in that class of work.

For reasons stated above, this claim should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: The System Committee contends Carrier violated Rule 63 of its Agreement with the Clerks when, as of March 1, 1950, it discontinued the position of Division Clerk in its Freight Traffic Department Office, Denver, Colorado, rate \$15.67 per day and concurrently therewith created the position of Assistant Division Clerk, rate \$12.50 per day, to do relatively the same class of work.

Rule 63 provides:

"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."

It may be, as Carrier suggests, that the work of the Division Clerk in its Freight Traffic Department, Denver, Colorado, has been materially simplified and has become less intricate during the course of time however, when the occupant of that position was promoted, the Carrier bulletined the position by its Bulletin Notice No. 71 dated March 1, 1950. See Rule 8 of the parties' agreement. The position was not filled. On March 24, 1950, Carrier, by Notice 73, bulletined a position of Assistant Division Clerk in its Freight Traffic Department, Denver, Colorado, which it filled on April 3, 1950, by assigning D. N. Whitaker thereto. The record clearly indicates that the class of work assigned to the position of Assistant Division Clerk is relatively same as that which was being done by the Division Clerk immediately prior to that position becoming vacant.

In fact, the reason for discontinuing the position of Division Clerk and creating that of Assistant Division Clerk, and that the latter is doing relatively, if not all, the same work formerly done by the Division Clerk, is fully evidenced by the letter of the General Freight Agent dated March 26, 1951. He is the same party who issued Bulletin Notices Nos. 71 and 73. Therein he stated: " * * I stated at the meeting that there were no qualified bidders for the position of Division Clerk, in view of which we blanked this position and created position of Assistant Division Clerk in order to qualify someone for the position of Division Clerk. I do not recall having stated that some of the more technical work had been assigned to the Assistant General Freight Agent, and such is not the case."

We think what Carrier did, considering the manner in and the purpose for which it was done, was in violation of Rule 63 and that the position of Division Clerk in Carrier's Freight Traffic Department, Denver, Colorado, should be restored by bulletin notice. See Awards 1264, 3396 and 4688 of this Division. We do not mean to hold that Carrier cannot properly abolish this position, when the need for the services no longer exist, but such change must be made in accordance with the Agreement of the parties. See Award 3557 of this Division. That in addition to restoring the position of Division Clerk at the proper rate of pay for that position Carrier shall pay to any employe or employes who have been adversely affected by its action compensation for all wage loss suffered by reason of what it did, same to be retroactive to March 1, 1950. But the total of such compensation shall not be in excess of a sum equaling the differential in pay between what was paid the Assistant Division Clerk and what it would have paid the occupant of that position had it been correctly classified as Division Clerk.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That both parties to this dispute waived hearing thereon;

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 Carrier violated the Agreement.

AWARD

Claim (1) sustained. Claim (2) (a), (b), (c), (d) and Note sustained to extent as set forth in Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Acting Secretary

Dated at Chicago, Illinois, this 23rd day of May, 1952.