

Award No. 6187
Docket No. CL-6139

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Adolph E. Wenke, Referee

PARTIES TO DISPUTE:

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

SEABOARD AIR LINE RAILROAD 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 the Carrier violated and continues to violate the Clerks' Agreement of August 1, 1945, when it abolished, effective as of April 17, 1950, the position of Asst. Accountant, Freight Station, Richmond, Virginia, occupied by Clerk L. R. Goulder, Jr., and

(2) That the position of Asst. Accountant be reestablished, effective April 17, 1950, at the rate of \$13.58 per day (plus any subsequent general wage increases applicable to said position) and that Clerk Goulder, and all other employes affected, be reimbursed for all wage losses sustained plus all expenses that they or their families have suffered due to this violation.

EMPLOYEES' STATEMENT OF FACTS: On April 13, 1950, notice was served on Clerk L. R. Goulder, Jr. by Freight Agent O. T. Hall, that effective with the close of business April 16, 1950, his position as Assistant Accountant, rate \$13.58 per day, would be abolished. Simultaneously with the abolishment of the Assistant Accountant's position, a new position was established by Bulletin No. 43 known as Car Clerk, at the rate of \$12.18 per day. (Exhibit B) Subsequent to the abolishment of the Assistant Accountant's position the duties of that position were assigned and thereafter performed by he following:

Chief Clerk (\$14.25 per day) Agency accounts—2½ hours per day.

Car Clerk (\$12.18 per day) (new position) Checking Cars—3 hours per day.

Utility Clerk (\$13.30 per day) P.U.D. report work—2½ hours per day.

OPINION OF BOARD: This claim, made in behalf of Clerk L. R. Goulder, Jr., had its inception out of the following factual situation: effective at the close of business on Friday, April 14, 1950, Carrier abolished the position of Assistant Accountant in its Freight Station at Richmond, Virginia, which position Claimant was then occupying; effective Monday, April 17, 1950, it established at that point a position of Car Clerk to which three hours of yard car checking was assigned that was being performed by Claimant as the occupant of the Assistant Accountant position before it was abolished; and, effective with the abolishing of the position of Assistant Accountant, it assigned the remaining work being performed by the occupant thereof as follows: 2½ hours of Agency Accounts to a Rate Clerk and a Chief Clerk and 2½ hours of Pick-up and Delivery Account work to a Utility Clerk. All these positions are in the same office, of the same class and in the same seniority district. The daily rate of pay of these positions, based on eight hours' work, was at the time as follows: Assistant Accountant \$13.58, Rate Clerk \$14.25, Chief Clerk \$15.20, Utility Clerk \$13.30 and Car Clerk \$12.18.

Because the claim was not, in the first instance, presented in writing to the Claimant's immediate superior, Agent O. T. Hall, Carrier contends it was not handled on the property in the usual manner up to and including the Chief Operating Officer designated to handle disputes as required by Section 3, First (i) of the Railway Labor Act and the National Railroad Adjustment Board's Circular No. 1.

The second paragraph of Addendum 15 of the parties' Agreement provides:

"Grievances or claims will be handled by the employe or his representative, first with his immediate superior, second with the Superintendent or the Superintendent's designated representative."

This requirement was fulfilled when Claimant's representative met in conference with Agent O. T. Hall, and others, on April 13, 1950, Agent Hall being Claimant's immediate superior.

However, Carrier contends this was further qualified by the requirements of Rule 36. This Rule then provided:

"Grievances. An employe who considers himself otherwise unjustly treated shall have the same right of hearing and appeal as provided above if written request is made to his immediate superior within seven (7) days of the cause for complaint."

It is Carrier's thought that "unjustly treated" contained in Rule 36 included claims as referred to in Addendum 15 and so understood by the Organization as evidenced by General Chairman Barber's letter of August 15, 1949. If this rule had not been amended, effective December 15, 1950, this argument would have considerable weight. Effective December 15, 1950, Rule 36 was revised to read:

"Grievances and Time Claims.

"An employe who considers himself unjustly treated, otherwise than covered by Rules 32, 33, 34, 35, 37, 38 and 45, shall have the same right of investigation, hearing, appeal and representation, as provided in those rules, if written request which sets forth the employe's complaint is made to his immediate superior within thirty (30) days of the cause for complaint."

It is evident that the parties were uncertain as to whether Rule 36, in effect prior to December 15, 1950, did or did not include claims, such as here involved, for otherwise there would have been no purpose in expressly including "Time Claims" in the revised rule. That they thought it did not

is further supported by the fact that when expressly included the time was extended from seven to thirty days. We find, under the rules in effect on April 13, 1950, that when Claimant's representatives orally presented the claim in conference to Claimant's immediate superior such handling met the requirements thereof.

Claimant was assigned to the position of Assistant Accountant on October 25, 1948. The bulletin advertising the position described the duties as: "Handles agency account and entire Pick-up and Delivery account." This was done in accordance with the requirements of Rule 12 of the parties' Agreement which provides, in this respect, that: "bulletin to show * * *, not more than four principal and preponderant duties, * * *."

The duties of the Car Clerk position, established as of April 17, 1950, were set out in the bulletin establishing the position as: "Check industrial tracks both north and south of the River; also billing freight."

Carrier may, when in the interests of efficiency and economy its operations so require, abolish positions and rearrange the work thereof unless it has limited its right to do so by the provisions of its collective Agreements. However, when doing so, the work of the positions abolished must be assigned to and be performed by the class of employes that are entitled thereto under the Agreements. See Awards 1314, 4939, 5318, 5331 and 5515.

Rule 84 of the parties' Agreement 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."

This is the only specific rule in the parties' Agreement which limits Carrier's right to abolish positions, when operating needs so require and rearrange the work thereof by assigning it to other employes of the same class who would be entitled thereto.

Only three hours of yard car checking duties being performed by the Assistant Accountant were assigned to the newly established positions of Car Clerk. These duties were not specifically set out as duties of the position of Assistant Accountant in the bulletin advertising that position. They are not normally duties of an Assistant Accountant but were assigned to that position as a fill-in so it would have eight hours of work. Yard car checking seems to be work that is normally assigned to and performed by several different kinds of clerical positions. It does not seem to be exclusively the work of any particular position. The assignment of these duties to the Car Clerk position did not make that position have relatively the same class of work as the abolished position of Assistant Accountant.

Due to decline in work Carrier's clerical forces had been reduced at the Richmond Agency from twenty-eight in June of 1946 to thirteen in May of 1950. It is true the immediate effect of abolishing the position of Assistant Accountant and establishing the position of a Car Clerk did not reduce the number of positions but, because of previous reductions, Carrier found it necessary to rearrange its work in order to effect more efficient operation. By assigning some of the yard car checking duties of the Rate-Bill Clerk at Bellbluff, Virginia, to the newly established position of car clerk the former was able to devote from 2½ to 3 hours more of his time each day to helping the Chief Clerk at Bellbluff bill freight, a service the Carrier needed. We do not find what Carrier did was done for the purpose of reducing the rate of pay for the work formerly done by the Assistant Accountant but was done to meet the conditions of its working requirements.

If the position of Utility Clerk became improperly rated because of the work assigned thereto that is another question which is not presented by this dispute. The same is true as to the position of Car Clerk.

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 Carrier has not violated the Agreement in the manner stated in the claim.

AWARD

Claim as presented denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 30th day of April, 1953.

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EMPLOYEES' STATEMENT OF FACTS: On April 13, 1950, notice was served on Clerk L. R. Goulder, Jr. by Freight Agent O. T. Hall, that effective with the close of business April 16, 1950, his position as Assistant Accountant, rate \$13.58 per day, would be abolished. Simultaneously with the abolishment of the Assistant Accountant's position, a new position was established by Bulletin No. 43 known as Car Clerk, at the rate of \$12.18 per day. (Exhibit B) Subsequent to the abolishment of the Assistant Accountant's position the duties of that position were assigned and thereafter performed by he following:

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POSITION OF EMPLOYES: There is in effect an Agreement between the parties effective August 1, 1945.

The following rules and provisions of the said Agreement effective August 1, 1945, are applicable in this claim as hereinafter set forth:

“Rule 12—Bulletining New Positions or Vacancies and Applying Therefor.

“New positions or vacancies will be promptly bulletined in agreed upon places accessible to all employes affected, for a period of seven (7) days on line of road and five (5) days in general offices, simultaneously to the entire seniority district as enumerated in Rule No. 7; bulletin to show location, title, not more than four principal and preponderant duties, hours of service and rate of pay. Employes desiring such position will file their applications with the designated official within that time, and an assignment will be made within five days thereafter; the name of the successful applicant will immediately thereafter be posted for a period of five days where the position was bulletined. Copy of bulletins will be furnished Local Chairman.

“Rule 70—Rating Positions.

“Positions (not employes) shall be rated and unless by agreement between the officer in charge and representatives of the employes the transfer of rates from one position to another shall not be permitted.

“Rule 71—Preservation of Rates.

“Employes temporarily or permanently assigned to higher rated positions shall receive the higher rates while occupying such position; employes temporarily assigned to lower rated positions shall not have their rates reduced.

“A ‘temporary assignment’ contemplates the fulfillment of the duties and responsibilities of the position during the time occupied, whether the regular occupant of the position is absent or whether the temporary assignee does the work irrespective of the presence of the regular employe. Assisting a higher rated employe due to a temporary increase in the volume of work does not constitute a temporary assignment.

“Rule 73—New Positions—Rates For.

“The wages for new positions shall be in conformity with the wages for positions of a similar kind, or class in the seniority district where created.

“Rule 84—Changing Title and Rate of Position.

“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.”

On October 12, 1948, the Carrier advertised the position of Assistant Accountant at the Richmond Agency, by Bulletin No. 125, with a daily rate of \$10.85. The preponderant duties of the position were: Handle Agency accounts and entire Pick-Up and Delivery account. (Exhibit A). This position was abolished on April 17, 1950, although there was eight hours of work remaining thereon as of that date.

OPINION OF BOARD: This claim, made in behalf of Clerk L. R. Goulder, Jr., had its inception out of the following factual situation: effective at the close of business on Friday, April 14, 1950, Carrier abolished the position of Assistant Accountant in its Freight Station at Richmond, Virginia, which position Claimant was then occupying; effective Monday, April 17, 1950, it established at that point a position of Car Clerk to which three hours of yard car checking was assigned that was being performed by Claimant as the occupant of the Assistant Accountant position before it was abolished; and, effective with the abolishing of the position of Assistant Accountant, it assigned the remaining work being performed by the occupant thereof as follows: 2½ hours of Agency Accounts to a Rate Clerk and a Chief Clerk and 2½ hours of Pick-up and Delivery Account work to a Utility Clerk. All these positions are in the same office, of the same class and in the same seniority district. The daily rate of pay of these positions, based on eight hours' work, was at the time as follows: Assistant Accountant \$13.58, Rate Clerk \$14.25, Chief Clerk \$15.20, Utility Clerk \$13.30 and Car Clerk \$12.18.

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