

Award No. 6407
Docket No. CL-6560

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Emmett Ferguson, Referee

PARTIES TO DISPUTE:

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

SPOKANE, PORTLAND AND SEATTLE 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 the Carrier violated the current working agreement dated January 1, 1952, when effective July 31, 1952, it abolished Loss and Damage Claim Investigator D, rated at \$15.77 per day, and concurrently therewith created and bulletined a new position titled Assistant Overcharge Claim Investigator with a rate of \$15.29 per day with assigned duties the same as the duties formerly performed by Loss and Damage Claim Investigator D prior to July 31, 1952.

(2) That the Carrier now be required to restore the position of Loss and Damage Claim Investigator D with the agreement rate of \$15.77 per day and compensate Clerk E. G. Elspas for the difference in rates since assigned to the position of Assistant Overcharge Claim Investigator on August 11, 1952.

EMPLOYEES' STATEMENT OF FACTS: Prior to August 1, 1952 the Claim Department consisted of the following positions:

- (1) Chief Clerk
- (2) Overcharge Investigator
- (3) Loss and Damage Claim Investigator A
- (4) Loss and Damage Claim Investigator B
- (5) Loss and Damage Claim Investigator C
- (6) Loss and Damage Claim Investigator D
- (7) Loss and Damage Claim Investigator E
- (8) Salvage Agent
- (9) Salvage Clerk
- (10) Loss and Damage Freight Inspector
- (11) Assistant Loss and Damage Freight Inspector
- (12) Claim Register Clerk
- (13) File Clerk

OPINION OF BOARD: The proven facts in this docket are as follows: Prior to July 31, 1952, there were five positions of Loss and Damage Claim Investigators at \$15.77 per day. On July 28, 1952, because the occupant of Position D was promoted, his position was abolished by a bulletin, which also reassigned his work to Investigator E. Previously E had been answering the 'phone and assisting the Overcharge Investigator. E's job was thereafter left unfilled until August 5, 1952, when by bulletin, "a new position of Assistant Overcharge Claim Investigator at \$15.29" was established. The Carrier frankly states of the new assignment, "Work on this position was formerly performed by position 'E'", but adds that the work itself was actually assisting the Overcharge Claim Investigator and answering the telephone and not in handling of loss and damage claims. The Carrier defends its action by citing "Rating Positions-Rule 72":

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

and "New Positions-Rule 75:

"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."

The Organization places its dependence upon "Rates-Rule 85:

"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."

Viewed in this light we are confronted with the question, May an established position be rerated by the Carrier upon a showing that the old position, because of a change in operations, is no longer properly described? Because we note that Rule 85 depends on the purpose in forbidding changes we believe that one of the tests to apply to the question is the good faith exhibited by the Carrier. If the realities of the situation are such that only good management motives are apparent, then the Carrier is permitted to exercise its discretion. If the change is proven to have been only to line up the rate with the actual duties and is not intended as an evasion of the rules or an attempt to place the work on another outside the Agreement, as in some of the cited Awards, it is within the purview of Rules 72 and 75. The Organization here does not deny the Carrier's factual assertions concerning the changes in the day to day work of the office. We conclude that there has been no showing of such ulterior purpose, or bad faith, in the present facts as would deny the Carrier the right to exercise its managerial discretion.

The Carrier, having shown that its purpose was not an evasion of the rules or to reduce the pay, has brought itself within Rules 72 and 75, and has not violated Rule 85.

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 there has been no violation of the Rules.

AWARD

The claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 10th day of November, 1953.