

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Livingston Smith, Referee

PARTIES TO DISPUTE:

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

WESTERN WEIGHING AND INSPECTION BUREAU

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(a) The Bureau violated and has continued to violate the Schedule Agreement effective September 1, 1949, when it failed and refused to properly rate Position No. 344, Steno-Clerk, Duluth, Minnesota, in the Northwestern Bureau District as advertised by Bulletin No. 105, August 29, 1950, at \$10.28 per day (now \$12.64 per day).

(b) That the Bureau now be required to establish, based on other positions with same title, duties and responsibilities in the Northwestern Bureau District, for this NEW position a going rate (now \$13.96) per day plus all subsequent general wage increases and adjustments to claimant Robert A. Johnson and all succeeding employes that may be assigned until this dispute is settled.

EMPLOYEES' STATEMENT OF FACTS: The Bureau issued on August 29, 1950, their Bulletin No. 101 abolishing Position No. 90, Chief Clerk, Duluth, Minnesota, that was rated at \$12.42 per day that was assigned to Mr. H. W. Liljegren, who was the only employe at Duluth, Minnesota, assigned to a work week Tuesday through Saturday with Sunday and Monday as rest days. The position of Chief Clerk has not been re-established up until the time this submission was prepared.

On the same day, August 29, 1950, the Bureau issued their Bulletin No. 105 (See Employes' Exhibit 1) establishing a NEW POSITION described as "Steno-Clerk" with an assignment Tuesday through Saturday at \$10.28 per day (now \$12.64 per day). This position was assigned to claimant Robert A. Johnson (See Employes' Exhibit 2). This being the only position at Duluth, Minnesota, after September 1, 1950, with an assignment Tuesday through Saturday with Sunday and Monday as rest days.

Employes' Exhibit 3 covers Bulletin No. 694 that was issued February 21, 1949, covering this same position when it was advertised at that time with the same basic rate, however, we call your particular attention to the difference in the duties that were attached to Position No. 344 covered on this exhibit as compared to the duties now listed on Employes' Exhibit 1.

All data contained herein has been presented to the Employees.

(Exhibits not Reproduced.)

OPINION OF BOARD: In the confronting dispute the Board is concerned with the question of whether or not the Respondent properly applied Rules 45 and 52 when it established the rate of \$12.64 for the position of Steno-Clerk, Duluth, Minnesota. Rules 45 and 42 provide

“RULE 45. NEW POSITIONS. 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.”

“RULE 42. RATING POSITIONS. Positions (not employes) shall be rated and the transfer of rates from one position to another shall not be permitted.”

Petitioners assert that the Carrier's action in establishing a rate of \$12.64 for this new position was in error in that what actually happened was that the rate for a previously existing (now abolished) position of Stenographer was projected forward and applied to the new position of Steno-Clerk without considering (1) that the duties of the new position were different and required greater capabilities (2) that here the position was not given a rate that was in conformity with the rates of other positions of a similar kind and class, in the same Seniority District. The Organization took the further position that the rate for this new position, that is, Steno-Clerk, should have been established at \$13.96, such rate being neither the highest nor the lowest, but the going rate for similar positions in the seniority district.

The Respondent took the position that it had properly established the rate for this position (subject to a 24 cents higher rate differential) at Duluth, within the meaning of Rule 45, in that the position in question was of a similar class and kind as an existing position at Sioux City, Iowa. It was further contended that while the rate for the new position was the same as the old position, there were likewise no material increases in the duties and responsibilities thereof; and that this fact standing alone would not justify a finding that an improper rate was established.

While there is a considerable amount of extraneous matter in this record, the parties are in substantial agreement on essential facts. Prior to the early part of February, 1950, there was a Stenographic position, designated as position 344, at Duluth. This position was abolished. On August 29, 1950, the Respondent bulletined a position carrying the classification of Steno-Clerk, rate \$12.64 at this point. The basis of this complaint is the alleged unilateral and arbitrary establishment of this rate in contravention of Rule 45. That sole question here is: Was the rate assigned to this position a proper one within the meaning of Rule 45, which requires that rates for new positions be fixed in conformity with those positions of a similar kind and class? The record indicates that there presently exist similar positions at five other points in the Seniority District. Of these, two have the same rate, which incidentally is the rate sought here. Each of the other rates are different, some higher, others lower. The record indicates that, at one time or another, the Petitioners suggested three different rates be assigned to the Steno-Clerk position at Duluth. There can be no doubt that the Steno-Clerk at Sioux City, Iowa is in the same Seniority District. There is nothing in the record to indicate that there is any difference in the Sioux City position and the one here at issue. The rule does not require the adoption of either the higher or lower rate; only that the rate used be in conformity with those of a similar kind and class in the same Seniority District. Such a position existed in Sioux City and the rate of same (with historical differential) was adopted by the Carrier. The rule was complied with.

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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois this 29th day of January, 1957.