

Award No. 8082
Docket No. CLX-7822

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward A. Lynch, Referee

PARTIES TO DISPUTE:

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

RAILWAY EXPRESS AGENCY, INC.

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

(a) The agreement governing hours of service and working conditions between Railway Express Agency, Inc. and the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, effective September 1, 1949, was violated at the Richmond, Virginia Agency when higher rated duties and responsibilities were assigned to the occupant of position titled "Special Clerk", Position 2, Group 330 without making an upward adjustment in the rate for the position concurrent with the assignment thereto of the higher rated work; and

(b) The position shall now be rated at \$313.84 basic per month and C. E. Martin compensated for the difference between the rate paid him of \$304.78 and the rate of \$313.84 or \$9.06 per month retroactive to and including September 22, 1951.

EMPLOYEES' STATEMENT OF FACTS: C. E. Martin, with a seniority date of December 18, 1933, is the regular occupant of position titled "Special Clerk", Position 2, Group 330; hours of assignment 8:30 A. M.-5:30 P. M.; work week assignment Monday through Friday, with Saturday and Sunday as days of rest; rate of pay \$304.78 basic per month. The duties of the position as shown on Bulletin 1, dated January 16, 1951, are:

"Scoring, recapping and closing payroll. Making Terminals and Vehicle piece reports. Handling Messenger mailing list and miscellaneous statistical duties as required." (Exhibit "A")

There are three other positions at the Office in Group 330 titled "Special Clerk", with the following duties and responsibilities:

Position 1, Group 330:

"Open mail, pull files, file records, handle unsettled tracers and debit and credits error letters, wait on public, answer telephone, prepare and forward outbound mail, issue supplies, prepare requisitions, make refunds, handle border count cards when required." (Exhibit "B")

The request for change in title and increase in pay was not made until March 22, 1952. As pointed out in many Awards of this Division, wages are not accepted over a long period of time without protest if an employee believes that his position is not properly rated. See Awards 1289, 1806, 1811, 2137 and others. In any event, as frequently pointed out by the Board, the Carrier should not be penalized for proceeding in the belief that the Agreement has been complied with and then, after a long lapse of time be confronted with a demand for accumulation of pay covering a period antedating the date request is made for reclassification and rerating of a specific position in a particular group.

Much space is devoted by Employees in the handling of this dispute on the property to a comparison of the duties of the position held by Special Clerk Martin with the duties of the other Special Clerks in Group 330, as well as the position of Payroll Clerk in the Superintendent's Office and others, but in the absence of a showing that a "New Position" has been created under the provisions of Rule 82, those comparisons are without effect in the determination of the issue presented in the instance under discussion. The claim before the Board is narrowed by the contentions of the Employees to one issue—a violation of Rule 82. The record is devoid of any support for such claim and contentions. The only issue with which the Board has to deal is the fixing of a rate, which under all precedent Awards it may not do. The claim is without merit under the facts of record, the rules, and not properly a dispute growing out of the interpretation or application of Agreements under Sec. 3 First (i) of the Railway Labor Act and should be denied in its entirety.

All evidence and data set forth have been considered by the parties in correspondence and in conference.

OPINION OF BOARD: Claimant here involved was assigned to the position of Special Clerk, Position 2, Group 330, assigned hours 8:30 A. M. to 5:30 P. M., rate \$304.78 basic per month.

The duties of this position were outlined by Bulletin 1, dated January 16, 1951, as follows:

"Scoring, recapping and closing payroll. Making Terminals and Vehicular piece reports. Handling messenger mailing list and miscellaneous statistical duties as required."

It is Organization's claim this position "was established to assist the Assistant Cashier in the Payroll Department; (that) during the past three or four years (antedating March 22, 1952) the Statistical Era of the Railway Express Agency came into being and as these duties were gradually assigned to the Assistant Cashier to perform (,) more and more of the payroll duties were delegated to the position now held by Employee (Claimant) C. E. Martin. Employee C. E. Martin is now in every sense of the word a Payroll Clerk working under the title of Special Clerk. Our claim is that his position be reclassified and henceforth be known as Payroll Clerk."

In asking, as the claim does, that Claimant Martin's position "shall now be rated at \$313.81 basic per month" Organization states this "will place his position in line with the position titled 'Payroll Clerk' in the Superintendent's Office, Kanawha Division, located at Richmond, Va., * * * also in line with that (salary) of the Assistant Cashier at the Richmond, Va., office."

With respect to the change in duties of Claimant's position, as alleged by Organization, there is in evidence a letter from Carrier's General Agent, H. L. Palmer, dated March 26, 1952, in which it is stated that "while the duties of Special Clerk C. E. Martin have developed into details about as outlined in your list of duties Exhibit A (attached to Organization's letter dated March 22, 1952, addressed to Carrier's General Agent) it is my opinion that the position is being adequately compensated at the present rate of pay of \$304.78 per month. We have four 'Special Clerks' here, all at the same rate of pay and I feel sure that the duties have changed somewhat and become

perhaps more complicated since they were originally set up, but even so all are receiving an adequate salary commensurate with the duties being handled.

"Rule 82 states that the wages for new positions as created shall be in conformity with the wages for positions of similar kind or class, and paragraph (b) of this rule says that if there is no similar position at the Agency, then the rate paid for similar positions at other similar offices within the Superintendent's Division shall be the governing factor.

"There is no similar position to my knowledge at any other office within this Division and although you make comparison of Mr. Martin's duties with the Payroll Clerk in the Superintendent's office, I would not take it that this comparison is to be made as the position titled 'Payroll Clerk' in the Superintendent's office, I believe, handles not only the office payroll, but in addition handles the Messengers' and Over-the-Road Truck Payrolls; hence would require more skill and knowledge to handle as compared to the miscellaneous lesser duties other than the office payroll mostly handled by Mr. Martin."

Organization argues Carrier's action to be violative of Rules 79, 80 and 82.

Among the several points of Carrier's defense is Rule 15 which provides:

"Except when changes in rates result from negotiations for adjustment, the changing of a rate of a specific position for a particular reason, shall constitute a new position."

It is argued on behalf of Carrier that under Rule 15, "the changing of a rate of pay, other than by agreement as contemplated by Rule 95, is a condition precedent to an existing position's becoming a new position subject to Rule 82. Inasmuch as no change has been made in the rate of Position 2 (Claimant's assigned position), and Rule 95 is the only rule by which such a change can be made, unless Carrier were to unilaterally abolish the existing position and establish a new position, Rule 82 is not applicable."

From the many claims and counter-claims made by the parties in the record here before us, several facts are evident:

1. There has been no change by Carrier in the title of position held by Claimant, nor has there been any change in the rate of Special Clerk, Position 2, Group 330.

2. Claimant's position has not been abolished.

3. No new position has been formally created, for whatever cause.

4. Claimant has not been temporarily or permanently assigned to a higher rated existing position.

5. Carrier's agent concedes the duties of Claimant "have developed into details about as outlined in your list of duties."

6. Relief Organization ostensibly seeks for Claimant is a new rate commensurate with what is describes as the "additional duties * * * included on this position."

7. From the record, what Organization seeks is: "Our claim is that his position be reclassified and henceforth be known as Payroll Clerk."

8. Rule 15 provides that "except when changes in rates result from negotiations, the changing of a rate of a specific position for a particular reason, shall constitute a new position."

9. Rule 95 provides clearly that "basic rates of pay now in effect shall become a part of this Agreement and shall remain in effect until changed by mutual agreement or as provided herein."

We must and do conclude on the basis of the record that what Organization here seeks in something that is beyond the jurisdiction of this Board; their only relief lies in the process of joint negotiations with the Carrier here involved. This Board has no right to change the basic rates of pay negotiated by the parties.

The case will be remanded to the parties for negotiation.

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 Employee involved in this dispute are respectively Carrier and Employee 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 claim be remanded to the parties for negotiation under Rule 95.

AWARD

Claim remanded to the parties as per Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 26th day of September, 1957.