

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Carl R. Schedler, Referee

PARTIES TO DISPUTE:

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

**CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD
COMPANY**

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

1. Carrier violated and continues to violate the Clerks' Rules Agreement when it failed to apply and maintain the proper rate of pay commensurate with the duties required on the position of Trainmaster's Clerk at Mitchell, South Dakota.

2. Trainmaster's Clerk Position No. 64 at Mitchell, S. D., shall be reclassified as Roadmaster's Clerk and the rate of pay of the position adjusted to conform with the rate of pay agreed upon for the Roadmaster's clerk position at Mitchell, South Dakota.

3. Carrier shall compensate Employee E. E. Davis for the period she occupied the position of Trainmaster's Clerk and any and all employees who occupied that position subsequent to Employee Davis, the difference between the amount paid those employees and the amount they would have received if the proper rate had been applied to the position.

EMPLOYEES' STATEMENT OF FACTS: As result of United States Labor Board Award 1986 the parties agreed that effective October 16, 1923 the rate of pay for Clerical Position No. 3, Roadmaster-Chief Carpenter Clerk, at Mitchell, S. D. would be \$4.55 per day. William Garrity, seniority date February 1920 was then the occupant of that position. Some time between January 1st and July 1st, 1929 the Chief Carpenter's Office was discontinued and Employee Garrity, who was then shown on the seniority roster as occupying a position of Roadmaster's Clerk, was assigned to a newly created position of Chief Carpenter Clerk at Mason City, Iowa.

Sometime subsequent to the discontinuance of the Chief Carpenter's Office at Mitchell, S. D. and employee Garrity's assignment to the position of Chief Carpenter Clerk at Mason City, Iowa, the Carrier established a new

wage increases and decreases have been properly applied to the rate of the position.

For instance, from January 16, 1946 up to July 22, 1952, when claimant Davis was assigned to the position, the general wage increases and decreases had totalled \$6.92 per day, bringing the agreed-to rate of the position from \$5.6816 per day to \$12.6016 per day. Since January 16, 1946, when the position was first placed within the scope of the Clerks' Agreement and for many years prior thereto the duties of the position have included stenographic and clerical work for the roadmaster as well as the trainmaster at Mitchell, S. D. When Claimant Davis made application for and was assigned to the position on July 22, 1952 the duties of the position continued to be exactly the same, in that they included roadmaster clerical work, as they had been since the position was first placed within the Agreement on January 16, 1946.

The employees attempt to say that we have discontinued the roadmaster clerk's position and transferred the duties of such position to the trainmaster clerk's position. The records clearly show that there was no roadmaster clerk's position in effect at Mitchell as of January 15, 1946 and for several years prior thereto and as of that date (before the trainmaster clerk's position was placed within the scope of the Clerks' Agreement) the duties of the position included the performance of roadmaster's clerical work along with the trainmaster's clerical work and that is the position that was placed within the scope of the Clerks' Agreement on January 16, 1946 at the agreed-to rate referred to above, since which time all proper wage increases have been applied to the rate of the position.

This claim amounts to a request for increase in the rate of pay of a position which has been in effect since it was placed within the scope of the Agreement at an agreed-to rate of pay and since which time all increases and decreases have been properly applied to the rate of the position. There can be no support for the claim and the Carrier respectfully requests that it be denied.

All data contained herein has been presented to the employees.

(Exhibits not reproduced.)

OPINION OF BOARD: This is a real old claim alleging failure of the Carrier to maintain the proper rate of pay for a position at Mitchell, South Dakota. It appears that the Carrier maintained a position entitled Roadmaster-Chief Carpenter Clerk at Mitchell from about October, 1923 until early 1929 when the incumbent was transferred to another location. The Carrier also maintained another position at Mitchell for several years prior to 1929, which was not covered by the Clerks' Agreement, which was entitled Trainmaster's Clerk. In January, 1946 the position of Trainmaster's Clerk was brought under the Clerks' Agreement. In 1954 the Organization charged a violation claiming that when the position of Roadmaster-Chief Carpenter Clerk was abolished in 1929 it had been reestablished in 1946 at a rate of pay below the agreed rate. Furthermore, the Claimants assert that if the position had not been discontinued the January, 1946 rate would have applied. The position of Trainmaster's Clerk was abolished about May 1, 1953. This claim was first presented to the Carrier in December, 1954 and denied in February, 1955. It is our opinion that there is no merit in the Carrier's position that this Claim is barred because of the assertion that the Organization was late in filing its ex parte submission, as this Board has held in many

Awards that a Claim is not barred when the Organization has notified the parties of its intent to file an ex parte submission and does thereafter timely file, as it did in this case.

The Carrier also argues that the Claim is barred by the doctrines of laches and estoppel because the history of the Claim indicates that it is based on old records and stale recollections. Although we believe there is some merit in this contention we do not believe it can be controlling as the theories of laches and estoppel are equitable defenses, and we are not asked to do equity here but to interpret and apply the terms of a written agreement.

It is our opinion that the Claim must be denied because the proof offered does not support the charge of a violation. We find from the evidence that the Roadmaster-Chief Carpenter Clerk position was abolished and the duties transferred away from Mitchell. We also find that the Trainmaster Clerk position, an excepted one under the Agreement, was created to fill an existing need and not as a replacement for the Roadmaster-Chief Carpenter Clerk. Subsequently, in January, 1946 the Trainmaster Clerk's position was brought within the Clerks' Agreement and the duties and rate of the position were agreed to by the parties at that time, Monday, January 16, 1946. Thereafter, agreed upon changes in rates of pay were negotiated for this position until it was abolished in May, 1953. During this period the parties had ample opportunity to negotiate a different classification or different rates of pay, and having failed to do this we must find that the position was properly classified at the proper rate of pay. Numerous awards of this Board have held that we are without authority to reclassify positions or order a change in the rate of pay. Such matters are properly the subject for negotiations. The claim must be denied.

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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of March, 1960.