

Award No. 11786

Docket No. CL-10231

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, Referee

PARTIES TO DISPUTE:

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

**THE DENVER AND RIO GRANDE
WESTERN RAILROAD COMPANY**

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

(1) The rules of the current Agreement with the Brotherhood of Railway Clerks have been and continue to be violated when on August 1, 1957, Carrier arbitrarily abolished the position of Secretary-Steno at Roper Yard Office, then reestablished this position under the title of "Secretary to the Assistant Superintendent-Roper," and appointed an employee from another seniority district to this position.

(2) That Ruth Cannon, and all other employees adversely affected as result of this violation of our Agreement, shall now be reimbursed for all salary losses sustained from August 1, 1957 until this violation is corrected.

NOTE: Reparation to be made by a joint check of payroll.

EMPLOYEES' STATEMENT OF FACTS: On August 1, 1957, the position of Secretary-Steno at Roper Yard Office, held by Ruth Cannon, a position that has been classified, rated, bulletined and assigned in accordance with all of the rules of the Clerks' Agreement since January 1942, was abolished. Concurrent with the abolishment and on the same date, i.e., August 1, 1957, Carrier issued the following bulletin:

"As a matter of information only, Mr. Mike G. Vlamakis is appointed Secretary to Assistant Superintendent, Roper. Rest days Saturday and Sunday. Rate of pay \$18.02 per day. W. E. Clawson."

The majority of the duties of the abolished position of Secretary-Steno were assigned to the newly created position of Secretary to the Assistant Superintendent, Mike G. Vlamakis, an employee who held no seniority rights in the Salt Lake Station and Yard Seniority District.

The duties of the two positions referred to, i.e., Secretary-Steno at Roper Yard and Secretary to the Assistant Superintendent-Roper, are set forth below in columnar comparison:

claims and grievances must be presented by or on behalf of "the employee involved."

See Award No. 40 rendered by Special Board of Adjustment No. 170, involving the Illinois Central Railroad Company and the Clerks' Organization, copy of which award is attached hereto.

Claim must be denied.

All data in support of Carrier's position have been presented to the Employees and made a part of the particular question in dispute. The Carrier reserves the right to answer any data not heretofore presented by Employees.

(Exhibits not reproduced.)

OPINION OF BOARD: The gravamen of the claim, filed with Carrier, reads:

"An established position that has been classified, rated, bulletined and assigned in accordance with the rules of Clerks' Agreement (Secretary-Steno Roper') since January 1942 and existing through two (2) different contract agreements, **was abolished and re-established** the same day on August 1, 1957 with a different rate and title (Secretary to the Assistant Superintendent, Roper') and Carrier appointed an employee from another seniority district, an employee having no rights in Roper Salt Lake Freight station seniority district to this position." (Emphasis ours.)

The claim does not set forth supporting facts.

Carrier's Superintendent, in his denial of the claim, said:

"The facts in connection with this claim are that on August 1, 1957, position of Secretary to Assistant Superintendent at Roper was established.

"Your attention is directed to Rule 1-D, which makes specific provisions for this position. Furthermore, you will note that this position is within the scope of the agreement and all rules apply except Rules 4, 10, 12, 17 and 19." (Emphasis ours.)

The denial does not set forth supporting facts.

In its appeal Petitioner reiterated that the position "was **abolished and re-established** on the same day with the same duties but with a different title . . ." (Emphasis ours.) It contains no supporting facts.

In denying the appeal Carrier's Director of Personnel said, insofar as here material:

"On August 1, 1957 position of Secretary to Assistant Superintendent at Roper was established. Rule 1 (d) makes specific provision for this position. You will note that this position is within the scope of the agreement and all rules apply except Rules 4, 10, 12, 17 and 19.

Your statement that position of Secretary-Steno was abolished and reestablished on the same day with the same duties, but with a different title and rate is not correct. It is true that position of Secretary-

Steno was abolished. It is also true that position of Secretary to Assistant Superintendent-Roper was established, but this position does not perform the same duties as was previously performed by the Secretary-Steno.

This new position handles many additional duties, which duties are performed by Secretaries to Assistant Superintendents at locations where employed on the property and these additional duties were never performed by occupant of the abolished position."

The conclusions that: (1) "this position does not perform the same duties as was previously performed by the Secretary-Steno;" and, (2) "this new position handles many additional duties, which are performed by Secretaries to Assistant Superintendents," are not supported by facts.

The claim, its denial, the appeal and denial on appeal constitutes the only evidence in the record as to what occurred on the property.

In its Submission Petitioner has set forth comparative lists of what it asserts was the work of the abolished position of Secretary-Stenographer and the work of the new position of Secretary to the Assistant Superintendent — no percentage of time devoted to each of the items of work is shown. Regarding these lists the Carrier states in its Submission:

"The listing of the duties in the Organization's Statement of Facts is the first time the Organization has ever submitted what they [sic] allege are the assigned duties of either position."

Carrier, on the other hand, in its Submissions has stated that some of the work of the abolished position was assigned to the new position with the remainder assigned to Clerks—this without indication of what work. Further, in its Submissions, Carrier has listed what it says is work of the position of Secretary to Assistant Superintendent but does not categorically state that such work was *de facto* performed by the occupant of the new position here involved.

Even assuming that all the facts stated in the Submissions of the parties are properly before us, they are vague. We are unable to correlate them. Consequently, we are unable, by comparison, to measure whether the work of the two positions involved is "relatively the same class of work" (Rule 61) or substantially the same.

The posture of this case is such that the ultimate issue presented—violation of the Agreement? — cannot be reached in the absence of a finding as to whether the work of the two positions is relatively or substantially the same. We, therefore, will dismiss the Claim.

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 on the facts of record the Division is unable to determine whether Carrier violated the Agreement.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 25th day of October 1963.