

Award No. 12562

Docket No. CL-12085

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, Referee

PARTIES TO DISPUTE:

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

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-4817) that:

(1) The Carrier violated the terms of the current agreement between the parties beginning on or about March 25, 1959 when it assigned the work of copying distribution statements in the Office of the Superintendent Freight Claims, which work had for many, many years been assigned to Group 1 Typist-Clerks and other Group 1 positions, to the occupant of the Group 2 position of Mail Clerk, Position No. 25, Mrs. Peggy Dickens and failed to compensate her at the established rate of pay for the work she was required to perform.

(2) The work of copying distribution statements and other records by use of an automatic copying machine in the Office of the Superintendent of Freight Claims shall be restored to Group 1 employees.

(3) Mrs. Peggy Dickens shall be paid the difference between the rate of the Mail Clerk position and that of Typist-Clerk from March 25, 1959 until corrected.

EMPLOYEES' STATEMENT OF FACTS: For many, many years, or as long as there is any record prior to March 25, 1959, distribution statements and other copy work in the Superintendent of Freight Claims' office was performed by Typist, Typist-Clerks and other Group 1 clerical employees at the same rate of pay as that of a Typist-Clerk. On or about May 13, 1958, Typist-Clerk position No. 24, occupied by Mrs. Peggy Dickens, was abolished. (See Employees' Exhibit No. 1). The work involved in this dispute was then assigned to Typist position No. 16 and Typist-Clerk Position No. 17, both with the same rate of pay, which at the present time is \$18.33 per day.

As a result of the abolishment of Mrs. Dickens' Typist-Clerk position No. 24, there being no Group 1 positions held by junior employees to which she

per day in a higher rated position or in a higher rated classification he is entitled to the pay of the higher rated position if there is one, and if there is none then it is the duty of the carrier to bulletin and establish one and a rate of pay therefore agreeable to the provisions of Rule 37. It may be added also that, in reason and fair dealing, if the carrier is parceling clerical work to two or more lower rated positions with the design of evading the operation of Rules 2 and 37 the Committee should have the right to insist upon a consideration of the sum total of the entire parceling in a determination of whether or not a new position should be established."

See also Awards 2588 (Blake), 3818 (Swaim), and 4437 (Robertson) concerning claims for reclassification of positions account performing four or more hours of clerical work.

There is ample evidence in the records underlying SBA No. 194 Awards 19, 21, 22 and 36, supporting the principles of those awards and which are consistent with the holdings of this Division.

Part (3) is the reparations portion of the petitioner's claim and that portion of the claim is vague, indefinite and uncertain. It leaves to speculation and conjecture whether the claim for difference in rate of pay is confined to the actual time devoted to the disputed work or for the full eight hours of the claimant's work period. The claim as handled on the property and as evidenced by the record was for actual time devoted to the disputed work but in any event, the Carrier submits that the theory upon which this claim is presented is unsupported by facts sufficient to maintain the Organization's position. This Board is requested to so find.

(Exhibits not reproduced.)

OPINION OF BOARD: The work of copying distribution statements, in Carrier's Office of the Superintendent of Freight, had been for many years assigned to Group 1 Typist-Clerks and other Group 1 positions. Then on some uncertain date, prior to March 25, 1959, Carrier installed an automatic copying machine to perform the work. The operation of the copying machine was at first assigned to employees in Group 1 positions. On March 25, 1959, it was assigned to Claimant who was classified in Group 2, with a lower rate of pay than a Group 1 position.

There is a conflict in the record as to the amount of time per day devoted by Claimant to operation of the machine. But, notwithstanding the conflict, we can find that Claimant devoted less than 2 hours per day to this task.

Petitioner argues that the operation of the machine was Group 1 work; and, therefore Claimant should be paid for all her services at the Group 1 rate. For the purposes of this case we may assume, *arguendo*, that the operation of the machine was Group 1 work.

The issue of an employee's entitlement to a higher rate of pay under such circumstances, on Carrier's system under the confronting Agreement, was settled in Award No. 19, Special Board of Adjustment No. 194, herein referred to as Award No. 19.

While the claim in Award No. 19 protested Carrier assigning Group 2 work to employees working in Group 1, the Award held:

"First.

While it is true that the work comprised in each of these three groups is defined in considerable detail, the Agreement does not make the work falling into any group the exclusive work of that group.

On the contrary, the entire scheme of classification into groups turns upon the preponderance of group duties assigned to a position and this presupposes the assignment of work across group lines.

Thus, a position may be assigned a considerable amount of work defined as Group 1 work, but the position is nonetheless classified in Group 2 if the preponderance of work assigned to the position falls within the definition of Group 2 work. Conversely, if a position is assigned four hours of work defined as Group 1 work, the position is classified in Group 1 and this presupposes the additional assignment of other than Group 1 work to that position. Likewise, in practice positions are classified in Group 2 or Group 3 upon the basis of the preponderance of Group 2 or Group 3 work assigned to the position.

It follows that, under this Agreement, the establishment of these three groups does not have the effect of limiting positions to the performance of the defined work of one particular group, nor does it have the effect of making the defined work of one particular group the exclusive work of positions in that group. Positions are divided into three distinct groups but the work is not so divided.

Second.

The establishment of these three groups does have the effect of identifying three different types of skills for pay purposes; and although a position may combine the work of all three groups, the preponderance of work assigned, not merely the performance of any higher rated group work, determines the classification of the position and hence the rate of pay.

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... In practice, work has been reassigned across group lines and claims have ensued and have been dropped. By the same token, the Carrier has, upon protest, receded from extreme exercises of the power of assignment. Thus, the practice evidences mutual give-and-take rather than the rigid application of the Agreement which marks the limits of the function of this Board."

We have studied and considered the dissent to Award No. 19; also, Awards of this Division involving other carriers, cited by Petitioner, which appear to be in conflict with Award No. 19. This posed the question as to whether Award No. 19 is palpably wrong. We conclude it is not. Therefore, as to interpretation and application of the Agreement before us, it is controlling precedent. Consequently, we hold that since Claimant's duties were not preponderantly Group 1 work that she has no contractual right to Group 1 rate of pay as claimed. **We will deny the claim.**

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 Carrier did not violate the Agreement.

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 May 1964.