

Award No. 12672

Docket No. CL-12290

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

George S. Ives, Referee

PARTIES TO DISPUTE:

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

ERIE-LACKAWANNA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL 4851) that:

(a) The Carrier violated and continues to violate rules of our current Agreement when, starting on April 7, 1958, it failed to properly compensate clerks Edward Iwanski, Francis Farrington, Helen Weber, Mary Murphy and their successor or successors after the assignment of higher rated duties and responsibilities to their positions, and;

(b) That claimants named above, and their successor or successors, shall be compensated, for this continuing violation, the difference between what they were paid and the amount they would have received had they been properly compensated in accordance with the Rules of the Clerks' Agreement from April 7, 1958 until such time as this dispute is disposed of and the claim satisfied.

EMPLOYEES' STATEMENT OF FACTS: Prior to April 7, 1958, offices maintained by the Carrier at Syracuse, New York, identified as the Division Freight Agent's Office and the Syracuse Freight Office were staffed in part as follows:

DIVISION FREIGHT AGENT'S OFFICE

Curtiss L. Butler	Chief Clerk	\$450.41 (Monthly)
Robert S. Fordham	Special Representative	480.25 (Monthly)
James M. Lorden	Stenographer	410.53 (Monthly)

SYRACUSE FREIGHT OFFICE

Clayton Hinkley	Chief Clerk	\$497.57 (Monthly)
Margaret Mahoney	Stenographer	17.864 (Daily)
Edward Iwanski	Billing Clerk	17.86 (Daily)
Francis Farrington	Car Clerk	17.648 (Daily)
Helen Weber	P&D Clerk	17.968 (Daily)
Mary Murphy	Demurrage Clerk	17.648 (Daily)

"It is the opinion of this Board that one certain assignment of work does not create a class for the job. In a study of the bulletin set forth above, we find that in some of them the work of "expensing and waybilling" is the top skilled work in the job itself and in others it is either an intermediate type of work or in the lower echelon of the services required for the position."

See also Third Division Awards 7838 and 9417.

In addition to the fact that the Carrier's position is supported by the above decisions of the Third Division, the Organization's claim that the Carrier violated Rule 25 of the present agreement, is unfounded. It has been ruled many times on the Third Division, that the Board does not have within its power, the right to negotiate increased rates of pay in behalf of the employees. Rule 25 of the current agreement is unambiguous. It deals primarily with employees "assigned to higher rated positions" for the "entire day" and further states that such temporary assignment "contemplates the fulfillment of the duties and responsibilities of the position."

In the case before the Board at this time none of the above conditions apply to the 4 claimants involved. None of the employees have been "assigned to higher rated positions for the entire day." None of the employees involved have assumed the full "duties and responsibilities" of the higher rated positions involved.

The carrier negotiated the consolidation of the offices of the "Freight Traffic Department" and the "Syracuse Freight Station" in good faith after full discussion with the representatives of the employees. The rearrangement of forces and redistribution of work which would result by reason of the consolidation were understood when the agreement of March 27, 1958 was consummated. The carrier has fulfilled its part of the understanding. There has been no cause for the employees to seek any increase in rates of pay other than what was therein agreed to by the parties.

Based upon the foregoing facts and authorities cited, the Carrier submits that these claims are totally without merit and should be denied.

OPINION OF BOARD: Pursuant to a Memorandum of Agreement between the parties the corresponding positions of Chief Clerk and Stenographer in the Freight Traffic and Operating Departments at Syracuse, New York were consolidated. Concurrent with the merger of these four full time assignments into two positions was the transfer of an item of work identified as Inbound Ledger Work into the Freight Office which had previously been performed by a Special Representative. Thereafter it became necessary for the Carrier to assign additional work formerly part of the original assignments to other clerical employees who were lower rated, the Claimants in this dispute. Four separate claims were originally filed and thereafter consolidated.

By mutual agreement a "Joint Check" was conducted by representatives of both parties which disclosed that the clerks involved were performing higher rated work during part of their eight hour tour of duty as a result of the consolidation. Moreover, this report recommended an increase of 20 cents per day for each clerk assigned such work. The Carrier declined to implement the recommendation contained in the report of the "Joint Check" on the grounds that its investigation developed that such employees did not perform any work not properly assigned to them at their present rate of pay.

Petitioner contends that the Carrier violated Rules 23, 25 and 26 of the applicable agreement between the parties by the arbitrary assignment of higher rated duties to the employees in question and refusing to negotiate an adjustment of the lower rates. A careful analysis of these rules disclosed that the thrust of the Petitioner's argument is found in Rule 26 which concerns the adjustment of rates when there is a sufficient increase or decrease in the duties and responsibilities of a position or change in the character of the service required to adjust by mutual agreement the compensation for such position.

Petitioner has cited a number of awards in support of its position which involved such issues as the discontinuance of established positions and the transfer of work assignments to lower graded positions or excepted positions under Scope Rule without consultation or negotiation, the transfer of employees either on a temporary or permanent basis to higher rated positions without an increase in compensation commensurate with the work performed and the assignment of additional duties to an established position, the effect of which was the creation of a higher rated position under the pertinent rules of the agreement between the parties.

The Carrier contends that neither Rule 23 or 25 of the Agreement between the parties are applicable in this dispute and that only Rule 26 is pertinent. These provisions of the Agreement between the parties are as follows:

"Rule 23—Rating Positions

"Positions (not employees) shall be rated and the transfer of rates from one position to another shall not be permitted."

"Rule 25—Preservation of Rates

"Employees temporarily or permanently assigned to higher rated positions shall receive the higher rates for the entire day. Employees temporarily assigned to lower rated positions shall not have their rates reduced.

"'A temporary assignment' contemplated the fulfillment of the duties and responsibilities of the position during the time occupied whether the regular occupant of a position is absent or whether the temporary assignee does the work irrespective of the presence of the regular employee. Assisting the higher rated employee due to a temporary increase in the volume of work does not constitute a temporary assignment."

"Rule 26—Adjustment of Rates

"When there is a sufficient increase or decrease in the duties and responsibilities of a position or change in the character of the service required, the compensation for such position will be subject to adjustment by mutual agreement with the duly accredited representative, but established positions will not be discontinued and new one created under the same or different titles covering relatively the same class or grade of work, which will have the effect of reducing the rate of pay or evading the application of these rules."

Inasmuch as the instant claim does not involve the transfer of rates from

one position to another, the rating of employes as opposed to positions or the temporary or permanent assignment of employes to higher rated positions, we agree with this contention of the Carrier.

The Carrier further contends that as the applicable provision of the agreement, Rule 26, provides that the question of adjusting rates of pay when conditions so require, is subject to adjustment by mutual agreement between the parties, this Board is without jurisdiction to fix rates of pay. Carrier has cited many awards adhering to the basic principle that the Board cannot fix rates of pay, but can only interpret the agreements as made and apply the rates which the parties themselves have fixed. Awards 2682, 5093, 6803, 7093 and others.

The awards cited by the Petitioner are readily distinguishable from the instant dispute. Moreover, there are no provisions in the agreement between the parties authorizing this Board to adjust rates of pay upon a showing that changes in duties or responsibilities have occurred entitling employes to higher rates of pay. As we stated in Award 10814 "We could find that they failed to negotiate as required to by the Agreement. However this is not the claim."

Therefore, the claim must be denied.

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 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 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 26th day of June, 1964.