



Award No. 14701

Docket No. CL-15230

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Murray M. Rohman, Referee

PARTIES TO DISPUTE:

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

SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5638) that:

(a) Carrier violated the Agreement when it abolished an 8-hour a day position of Rate Clerk in the office of Director, Revenue Accounting, Atlanta, Georgia, with a rate of \$22.06 a day and distributed all of the assigned work thereon to a lower rated position paying \$21.82 a day, the higher rate of \$22.06 being transferred to another section of the same office.

(b) Carrier shall now be required to compensate Mrs. M. E. O'Brien the difference in rates of pay of \$22.06 a day and \$21.82 a day beginning April 16, 1963, and continuing until this violation is corrected.

EMPLOYEES' STATEMENT OF FACTS: This dispute is between the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees as a representative of the class or craft of employees in which the claimant in this case holds position and the Southern Railway System.

Two rate clerk positions with rates of pay of \$22.06 a day located in Section (G) of the Southern Railway System office of Director, Revenue Accounting (Freight Accounting), Atlanta, Georgia, were abolished by Abolishment Bulletin #33 of March 20, 1963, (Employees' Exhibit "A"), one of which was held by Mrs. M. E. O'Brien. Two rate clerk positions with rates of pay of \$22.06 were then established in Section (GA) of the Southern Railway System office of Director, Revenue Accounting (Freight Accounting), Atlanta, Georgia, as advertised in Vacancy Bulletins #34 and #35 of March 20 and 21, 1963, (Employees' Exhibits "B" and "C").

Mrs. O'Brien was familiar with the work to which she had been assigned by bulletin, that of working with the rates and divisions in connection with the Illinois Central settlements for which her assigned rate of pay was \$22.06 a day. When her position was abolished, she knew that her work still existed and expressed a desire to continue doing the same work. In order to accomplish this, she exercised a displacement on the position to which her work was transferred as posted in Bulletin #46, of April 15, 1963, (Employees' Exhibit "D").

"Rule 21 — Reducing Forces and Exercising Seniority (Revised, effective October 1, 1938)

(a) When forces are reduced, employees affected will be given all reasonable notice practicable (in no case less than thirty-six (36) hours) and will be eligible to any position of their respective seniority district to which their seniority and qualifications entitle them under this schedule. Employees, other than those embraced in Groups 4 and 5, will be required to avail themselves of this rule within thirty (30) days."

* * * * *

"Rule 46 — Preservation of Rates and Employment

(a) (Effective June 1, 1921) Employees temporarily or permanently assigned to higher rated positions shall receive the higher rates while occupying such positions; employees temporarily assigned to lower rated positions shall not have their rates reduced. A 'temporary assignment' contemplates the fulfillment of the duties and responsibilities of the position during the time occupied, whether the regular occupant of the position is absent or whether the temporary assignee does the work irrespective of the presence of the regular employee. Assisting a higher rated employee due to a temporary increase in the volume of work does not constitute a temporary assignment.

* * * * *

(b) (Revised, effective October 1, 1938) Except as provided in Rule 44, the wages for new positions shall be fairly comparable with wages for positions of similar kind or class in similar locations in the Seniority District where created; if no comparable position in the seniority district in which new position is to be created, the rates for comparable positions in other similar districts and locations shall be considered.

(c) (Effective September 1, 1926) The transfer of rates from one position to another shall not be permitted. Except when changes in rates result from negotiations for adjustments of a general character, the changing of a rate of a specified position for a particular reason shall constitute a new position.

(e) (Effective June 1, 1921) Except as otherwise provided in these rules, established positions shall not be discontinued and new ones created under a different title covering relatively the same class of work for the purpose of reducing the rate of pay or evading the application of these rules."

OPINION OF BOARD: Claimant occupied the position of Rate Clerk in the Received Section of the Rate Department in the office of Director, Revenue Accounting, Atlanta, Georgia. She held one of the eleven positions of Rate Clerk which paid \$22.06 per day. In addition, this section also included one Rate Clerk position paying \$22.99 per day, seventeen paying \$22.75 and six with a rate of \$21.82 per day. Although there are four different rates of pay in this section, all 35 positions performed duties in common and the variance in rates reflect step increases.

Effective April 1, 1963, two of the \$22.06 per day positions were abolished due to a decrease in the work of this section. At the same time, based on the increased volume of work in the Forwarded and Overhead Section of the Rate Department, two positions with the same rate of \$22.06 per day were reestablished.

The Claimant occupied one of the abolished \$22.06 positions and, thereupon, on the basis of her seniority, bid and was accepted for one of the \$21.82 positions in the Received Section. Subsequently, she bid on and was assigned to a Rate Clerk position of \$22.75 per day, effective November 18, 1963.

In the interim, the Organization filed this claim on her behalf, alleging a violation of Rule 46 (c) of the effective agreement and seeking additional compensation of 24 cents per day during the hiatus.

The issue thus posed is whether the Carrier violated Rules 20 and 46 (c) and (e) when it abolished the Claimant's position with an assigned rate of \$22.06 a day and reestablished another position in the same office with the same rate of pay.

"Rule 20 — Abolishing Positions (Effective October 1, 1938.)

When forces are reduced the position to be abolished shall be the position or positions which are no longer needed; if there be two or more positions doing the same kind of work paying different rates in the office where such abolishment is to be effected, the position paying the lowest rate shall be abolished.

Understood and agreed that in reducing clerical forces, where there are two clerical employes in the same office assigned to the same class of work, working the same hours and receiving the same rate of pay, if one of the positions is to be abolished it will be the position filled by the junior of the two employes.

Rule 46 — Preservation of Rates and Employment

(c) (Effective September 1, 1926) The transfer of rates from one position to another shall not be permitted. Except when changes in rates result from negotiations for adjustments of a general character, the changing of a rate of a specified position for a particular reason shall constitute a new position.

(e) (Effective June 1, 1921) Except as otherwise provided in these rules, established positions shall not be discontinued and new ones created under a different title covering relatively the same class of work for the purpose of reducing the rate of pay or evading the application of these rules."

It is the Organization's contention herein, that when a position is abolished, the one paying the lowest rate shall be abolished as specified in Rule 20.

The Carrier, on the other hand, insists that the net effect of the change was not to reduce the clerical force in the Rate Department, but simply to move two \$22.06 per day positions from one section to another, within a common seniority district in the Rate Department. Inasmuch as the two abolished positions were restored simultaneously, at the same rate and in the

same department, no reduction in force occurred, as contemplated under Rule 20.

The Carrier further argues that Claimant could have exercised her seniority rights and bid on the new \$22.06 positions which were subsequently assigned to junior employees. Upon her own volition, she elected to take one of the six positions which paid 24 cents less, based on her preference to work on that particular position.

It appears to us that the Carrier did not violate the effective Agreement. It is recognized that under Rule 20, the Carrier has a right to abolish positions which are no longer needed. This rule contemplates abolishing positions due to a reduction in force.

It is our understanding that a reduction in force occurs when an employee is temporarily or permanently laid off or terminated due to a decrease in the volume of work. It is also manifest that Rule 46 (e) is inoperative herein, as the same rated position was immediately reestablished in another section. It is apparent, therefore, that a reduction in force did not result from such reassignment or rearrangement of personnel.

Hence, under the circumstances prevailing herein, the Claimant voluntarily elected to remain in the same section at the reduced rate of \$21.82 per day. This reduction of 24 cents per day was a deliberate choice on her part as she could have exercised her seniority rights to move into the re-established position at the \$22.06 rate per day. Therefore, it is our conclusion that the Carrier should not be penalized to the extent requested in the claim, inasmuch as the Organization has failed to establish a violation of the cited Rules.

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 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 29th day of July 1966.

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