

**Award No. 14747**  
**Docket No. CL-12754**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**(Supplemental)**

**G. Dan Rambo, Referee**

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**PARTIES TO DISPUTE:**

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

**NORFOLK & WESTERN RAILWAY COMPANY**

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood (GL-4964) that:

(a) The Carrier violated the provisions of the Clerks' Agreement on April 1, 1958 and again on June 1, 1958 when, in the office of Superintendent Car Service at Roanoke, Virginia, it failed to classify, rate, bulletin and assign two new positions in accordance with the Agreement rules; and,

(b) Clerk Donald P. Bishop shall be additionally paid the pro rata rate of the new position entitled Supervisor of Tabulators and Collators, and Clerk Noel C. Keen shall be additionally paid the pro rata rate of the new position entitled Supervisor of Key Punch; both claims for compensation retroactive sixty days prior to August 18, 1958, and to continue until the positions are bulletined and assigned to claimants or otherwise filled under the Agreement rules.

**EMPLOYEES' STATEMENT OF FACTS:** 1. Prior to April 1, 1958, clerical employees in the Carrier's Office of Superintendent Car Service were under the direct supervision of a Chief Clerk and an Assistant Chief Clerk, both positions being under the Clerks' Agreement but "excepted" from some of the rules thereof as will be hereinafter shown.

2. The Carrier began to install and use IBM Machines to perform the clerical work previously done manually and, on April 1, 1958, it assigned Clerk Herman S. Thomasson to a newly created position called Supervisor of Tabulators. The position was not bulletined and filled under Agreement rules. The duties required of Clerk Thomasson are to plan the work, wire machine plugboards, and supervise the Clerks who operate tabulating, collating and printing machines.

**CARRIER'S STATEMENT OF FACTS:** In connection with changing the Carrier's car record work in its Car Record Office at Roanoke, Virginia from manual to machine operation, the Carrier established a new position of Supervisor Machine Department, effective April 1, 1958, and a new position of Supervisor Key Punch Department, effective June 1, 1958.

On April 1, 1958, Herman S. Thomasson was appointed to the position of Supervisor Machine Department, and Thomasson's former position as Utility Clerk, a position under the Clerks' Agreement, was bulletined and assigned in accordance with the applicable rules of such Agreement.

On June 1, 1958, William S. Menefee was appointed to the position of Supervisor Key Punch Department, and Menefee's former position as Stenographer-Clerk, a position under the Clerks' Agreement, was bulletined and assigned in accordance with the applicable rules of such Agreement.

The duties assigned to the position of Supervisor Machine Department consist entirely of supervising the work in the Machine Room and the duties assigned to the position of Supervisor Key Punch Department consist entirely of supervising the work in the Key Punch Room. No clerical work whatever is performed by the incumbent of either of these two supervisory positions.

The Employees filed the following claim (See Carrier's Attachment "A"):

"1. Carrier violated the terms of the Clerks' Agreement, effective July 1, 1944, when on April 1, 1958 it assigned Utility Clerk Herman S. Thomasson, who has a seniority date of February 15, 1940, in the Car Service Department of the Norfolk & Western Railway Company, Roanoke, Va., to a misnomer and created position in that department, classified, (by Carrier) as Supervision of Tabulators and Collators, rate of pay \$500.00 per month.

"2. That Carrier violated the terms of the Clerks' Agreement, effective July 1, 1944 when on June 1, 1958 it assigned Steno-Clerk William S. Menefee, who has a seniority date of May 1, 1939, in the Car Service Department of the Norfolk & Western Railway Company, Roanoke, Va., to a misnomer and created position in said department, classified, (by Carrier) as Supervisor of Key Punch, rate of pay \$490.00 per month.

"3. That Clerk Donald P. Bishop, seniority date of December 1, 1926, and Clerk Noel C. Keen, seniority date of April 1, 1929, in the Car Service Dept., now be assigned to above-mentioned created positions and compensated at the created positions' rates of pay, additional eight hours per day, retroactive 60 days from date of this claim and compensation to continue in effect each day until correction is made."

The Carrier declined the claim.

(Exhibits not reproduced.)

**OPINION OF BOARD:** It is the contention of Carrier that there is a substantial variance between the claim presented to this Board and the claim handled on the property.

As handled on the property, the claim was:

“ ‘Claim of the Local Committee of the Brotherhood, that:

“ ‘1. Carrier violated the terms of the Clerks’ Agreement, effective July 1, 1944, when on April 1, 1958 it assigned Utility Clerk Herman S. Thomasson, who has a seniority date of February 15, 1940, in the Car Service Department of the Norfolk & Western Railway Company, Roanoke, Va., to a misnomer and created position in that department, classified, (by carrier) as Supervision of Tabulators and Collators, rate of pay \$500.00 per month.

“ ‘2. That Carrier violated the terms of the Clerks’ Agreement, effective July 1, 1944 when on June 1, 1958 it assigned Steno-Clerk William S. Menefee, who has a seniority date of May 1, 1939, in the Car Service Department of the Norfolk & Western Railway Company, Roanoke, Va., to a misnomer and created position in said department, classified, (by carrier) as Supervisor of Key Punch, rate of pay \$490.00 per month.

“ ‘3. That Clerk Donald P. Bishop, seniority date of December 1, 1926, and Clerk Noel C. Keen, seniority date of April 1, 1929, in the Car Service Dept., now be assigned to above-mentioned created positions and compensated at the created positions’ rate of pay, additional eight hours per day, retroactive 60 days from date of this claim and compensation to continue in effect each day until correction is made.’ ”

The claim submitted to this Board in President Harrison’s letter of May 10, 1961, read:

“ ‘Claim of the System Committee of the Brotherhood that:

“(a) The Carrier violated the provisions of the Clerks’ Agreement on April 1, 1958 and again on June 1, 1958 when, in the office of Superintendent Car Service at Roanoke, Virginia, it failed to classify, rate, bulletin and assign two new positions in accordance with the Agreement rules; and,

“(b) Clerk Donald P. Bishop shall be additionally paid the pro rata rate of the new position entitled Supervisor of Tabulators and Collators, and Clerk Noel C. Keen shall be additionally paid the pro rata rate of the new position entitled Supervisor of Key Punch, both claims for compensation retroactive sixty days prior to August 18, 1958, and to continue until the positions are bulletined and assigned to claimants or otherwise filled under the Agreement rules.”

It is true as set out in Award 6115 (Messmore) et sequiter that the relief demanded is ordinarily treated as no part of the claim and may be amended without bringing about a variance per se, but has the subject matter of the claim changed? This criteria for variance was set out in Award 3256 (Carter) and may be applied here.

The claim dealt with on the property was in essence that the Agreement was violated by the appointment of employees Thomasson and Menefee to

created positions; that Bishop and Keen, employees of greater seniority, should be assigned to the said positions and compensated for the pay lost by the alleged erroneous appointments.

As presented to this Board, the claimed violation was Carrier's failure to "classify, rate, bulletin and assign two new positions in accordance with the Agreement rules; . . ." It is the opinion of this Board that such represents a material change in the subject matter of the Claim.

This Board has consistently held that where a substantial variance exists between the claim handled on the property and that presented to the Board, the Board may not accept jurisdiction and resolve the dispute. See Awards 10078, 10193 (Begley); 10420 (Dolnick); 10537 (Sheridan); 10749 (Stark); 10873 (Hall); 11367 (Dorsey); 14258 (Lynch); 14298 (Rambo).

**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 the Claim shall be dismissed.

#### AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 4th day of August 1966.

#### LABOR MEMBER'S DISSENT TO AWARD 14747, DOCKET CL-12754

Award 14747, Docket CL-12754, is in error for the simple reason that the question posed by the Referee, i.e., "\* \* \* has the subject matter of the claim changed?", was erroneously answered in the affirmative whereas the record clearly required a negative answer thereto.

On the property the Carrier was charged with violation of:

Rule 1	— Scope
Rule 4	— Seniority
Rule 5	— Promotion, Assignment and Displacement
Rule 8	— Qualifying
Rule 10	— Bulletining New Positions or Vacancies

Rule 20 — Excepted Positions  
 Rule 36 — Change in Rates  
 Rule 40 — Established Positions  
 Rule 41 — Rating Positions  
 Rule 42 — Preservation of Rates  
 Rule 44(a) — New Positions  
 Rule 58 — Effective Dates and Changes

and such rules were argued throughout the handling. On February 24, 1959, Carrier's highest officer stated that (R p. 20) :

"Rules 1, 4, 5, 8, 10, 20, 36, 40, 41, 42, 44 and 58, Clerks' Agreement, are cited in support of the claim."

This dispute was brought about because, as stated by Carrier (R p. 43) :

"\* \* \* Carrier determined that two additional supervisory positions would be needed to supervise the performance of the work by machines. These positions were established and filled by appointment \* \* \*."

This was done in the face of Section 6 of the parties Agreement which reads:

"Section 6: Additional excepted positions may be added to those covered by Sections 4 and 5 of this Supplemental Agreement **only by Agreement in writing between the Management and the General Chairman.**" (Emphasis supplied)

The Supplemental Agreement "A", a part of the parties "Master Agreement", lists numerous supervisory positions and was arrived at for the purpose of "providing for exceptions from the application of some or all of the provisions of this Agreement." (Rule 1(b).)

To hold that the subject matter of the claim had been changed in the face of such a record simply indicates an unwillingness to face the issues involved. The parties are required to negotiate on the issues, state their positions, give adequate reasons in writing, etc., so that the claim may be matured and the issues in dispute joined. In the statement of claim, upon submission, the petitioner is to:

"\* \* \* clearly state the particular question upon which an award is desired."

and that, precisely, is what was here done.

The claim of variance, when the entire record is so clear as to the issues should have been dismissed on the basis of Award 7923, Smith, reading:

"On the basis of the record as a whole we cannot agree with the Respondent that this Claim was not timely handled on the property. Nor can we agree that this claim should be dismissed for the reason that the form in which it is presented here is substantially different than that in which it was presented on the property. While admittedly there is a variance we do not think that such variance is

fatal to its (claim) consideration. We have held that all that is required of a claim is that it be presented in a manner and form that will enable a Carrier to identify the Scope thereof and be in a position to prepare an adequate defense thereto. \* \* \*."

(See also Awards 6115, 6656, 10639, 10918, and others.)

Had that properly been considered and answered then the merits, weighed against the language of the Agreement, would have had to have been sustained.

I therefore dissent to this erroneous Award.

/s/ **D. E. Watkins**

D. E. Watkins, Labor Member 8-10-66