

Award No. 14990
Docket No. CL-15915

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Levi M. Hall, Referee

PARTIES TO DISPUTE:

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

**ATLANTA & WEST POINT RAIL ROAD — THE WESTERN
RAILWAY OF ALABAMA**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5913) that:

(1) The Carrier violated the Clerks' Agreement, effective May 1, 1942, as amended, at Atlanta, Georgia, when it arbitrarily and unilaterally abolished the position of Solicitation Clerk, General Freight Office, salary \$464.44 per month, effective with the close of business Friday, June 11, 1965, and created in lieu thereof, effective Monday, June 14, 1965, a position of File Clerk, salary \$425.28 per month, involving substantially the same duties which had theretofore been performed by the Solicitation Clerk since about January 14, 1958.

(2) Clerk Harold C. Nutt, and/or his successors, if any, shall now be compensated for the difference between salary of \$464.44 per month and \$425.28 per month, or \$39.16 per month, retroactive to June 21, 1965 and continuing thereafter until adjusted.

EMPLOYEES' STATEMENT OF FACTS: Under date of June 3, 1965, Chief Traffic Officer W. T. Martin, General Offices, Atlanta, Georgia, posted a bulletin abolishing, effective with the close of business on June 11, 1965, the position of Solicitation Clerk and also noted on this bulletin was the reestablishment of a position of File Clerk, at salary of \$425.28 per month. Copy of this bulletin is hereto attached and identified as Employees' Exhibit No. 1.

Under date of January 9, 1958, a prior existing position of File Clerk, then occupied by Clerk W. G. Fuller, was abolished and all of the duties attached to that position were assigned to the Solicitation Clerk, and copy of this bulletin is hereto attached and identified as Employees' Exhibit No. 2.

June 4, 1965, Vice General Chairman S. S. Shepard, Jr. wrote to Chief Traffic Officer W. T. Martin protesting the action of Mr. Martin, and copy of this letter of protest which is self-explanatory, is hereto attached and identified as Employees' Exhibit No. 3.

and to certain other higher rated employees. On June 3, 1965, the then occupant of Solicitation Clerk position resigned from the service. Carrier felt that the efficiency of the office would be improved by assigning the solicitation duties to other employees and recreating the position of File Clerk, which was done. The rate arrived at for the re-created position was by taking the rate at the time position was abolished on January 9, 1958, and adding to it the increases since that date. There were no furloughed employees or extra employees and claimant, Mr. Nutt, was hired for the job. Claim was filed and progressed through the various levels on the property and declined at all levels.

OPINION OF BOARD: Precedent to a discussion on the merits, the following appear to be the uncontroverted facts in this matter.

Under date of January 9, 1958, a prior existing position of File Clerk was abolished and all the duties attached to that position were assigned to the Solicitation Clerk whose salary at close of business on June 11, 1965 was \$464.44 per month.

On June 3, 1965, seven and a half years later, the then occupant of the Solicitation Clerk position resigned from the service of the Carrier and on the same date the Carrier posted a bulletin abolishing the position of Solicitation Clerk and also noticed on the bulletin board was the reestablishment of the position of File Clerk at a salary of \$425.28 per month, effective June 14, 1965.

Carrier contends that what was done was the re-establishment of a File Clerks' job which had been in effect for many years in the Traffic Department, that the work done by Claimant is strictly that of a File Clerks' job as it existed prior to January, 1958, and not the work of a Solicitation Clerk; that the present rate of pay of the File Clerks' position is the rate of pay at the time the job was abolished in 1958 plus increases that had occurred since that time up to the time the job was re-established; that what remained of other duties of the Solicitation Clerk were distributed to the remaining clerks in the Traffic Department.

Petitioner contends that what the Carrier has attempted to do is to discontinue an established position and create a new position, under a different title, covering relatively the same class of work for the purpose of reducing the pay for the work.

Carrier to the contrary contends a new position was not created but an old one re-established.

There is not any question but that Carrier has the right under the Agreement to rearrange its forces and transfer work so long as it stays within the confines of the Agreement.

Rule 40(h) of the Agreement provides, as follows:

"(h) 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 pay or rendering these rules inapplicable."

Our first consideration here must be a determination of the question as whether or not a new position was created. Carrier does not deny that the

former position of File Clerk was abolished in January, 1958, and there were no reservations as to its' future intention, as the position was discontinued.

In Webster's Seventh new Collegiate Dictionary (1965) we find the word "abolish" defined, as follows: "to do away with wholly." If the position was wholly done away with, obviously there was no old position to be re-established.

The Carrier does not indicate how much solicitation work was reassigned to other clerks in the Traffic Department but the record does disclose that the duties of the File Clerk came from the abolished position of the Solicitation Clerk and were sufficient to require a full time file clerk position.

In Award 2683 — Carter in discussing a rule similar to Rule 40(h) in the present Agreement it is stated:

"The rule contemplates that the wages of a new position shall be in conformity with the wages being paid employees in positions presently filled. It certainly was not the intent of the rule to conform the wages of a newly created position with those of a position no longer in existence. See also Award 3467 — Messmore; Award 4127 — Robertson; Award 11559 — Dolnick."

In compliance with the facts presented by this record, the pertinent rules in this Agreement and prior awards cited, we must conclude that the Agreement has been violated and the Claim should be sustained.

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 Agreement has been violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 2nd day of December 1966.

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