

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**(Supplemental)**

Herbert J. Mesigh, Referee

**PARTIES TO DISPUTE:**

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

**THE DENVER AND RIO GRANDE WESTERN  
RAILROAD COMPANY**

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood (GL-6174) that:

1. Carrier violated rules of the Clerks' Agreement when it created a new position of Tariff Compiler No. 3 at the rate of \$23.81 per day on April 25, 1966.
2. Carrier shall now rebulletin this position at the correct rate of \$24.31 per day.
3. Mr. W. C. Vorpapel and/or his successors shall now be paid an additional 50 cents per day for each and every day he occupies this position, continuing until this violation is corrected.

**EMPLOYEES' STATEMENT OF FACTS:** Under date of April 25, 1966, Bulletin No. 1847 was posted in the Carrier's Traffic Department at Denver, Colorado, advertising new position entitled Tariff Compiler No. 3 at the rate of \$23.81 per day, (Employees' Exhibit No. 1).

Under date of April 27, 1966, the Local Chairman wrote to Mr. C. E. Lennig, Assistant Vice President-Traffic, protesting the rate of pay shown on his Bulletin No. 1847 and called his attention to the provisions of Rule 53, (Employees' Exhibit No. 2). Mr. Lennig rejected the Local Chairman's protest in his letter of May 4, 1966, (Employees' Exhibit No. 3).

A. M. Rosenberger was assigned to position of Tariff Compiler No. 3 as advertised in Bulletin No. 1847. On April 29, 1966, A. M. Rosenberger bid for and was assigned to position of Tariff Compiler No. 2. As a result of this assignment, the position of Tariff Compiler No. 3 was again bulletined and was assigned to Mr. W. C. Vorpapel on May 10, 1966. Mr. Vorpapel was on this position when Local Chairman filed claim under date of June 12, 1966, and was named as claimant (Employees' Exhibit No. 4). This claim was denied by Mr. C. R. Lennig, on July 25, 1966, (Employees' Exhibit No. 5).

Dear Sir:

Organization's File 101-N-23, Carrier's File CL-36-66, and our conference August 24, 1966, in connection with:

'Claim of the System Committee of the Brotherhood that:

1. Carrier violated rules of the Clerks' Agreement when it created a new position of Tariff Compiler No. 3 at the rate of \$23.81 per day on April 25, 1966.

2. Carrier shall now rebulletin this position at the correct rate of \$24.31 per day.

3. Mr. W. C. Vorpapel and/or his successors shall now be paid an additional 50 cents per day for each and every day he occupies position, continuing until this violation is corrected.'

At the outset it is called to your attention that claim appealed to this office is one of first impression which has not previously been handled by the Local Chairman with the Traffic Department and, therefore, is not properly before this office for consideration.

The record also shows that the position of Compiler No. 3 obtained by Claimant Vorpapel was not a newly established position — rather it was an old established position vacated by A. M. Rosenberger. The rate of \$23.81 was the established rate for Compiler No. 3 bid for by and assigned to Claimant Vorpapel.

Claim is denied.

Yours truly,

/s/ E. B. Herdman  
E. B. Herdman  
Director of Personnel

JWL:pf"

**OPINION OF BOARD:** Position entitled Tariff Compiler No. 3 was abolished by Carrier December 7, 1965. The work and duties was distributed to occupants of positions of Tariff Compiler No. 1 and 2. The position was bulletined (No. 1847) with daily rate of pay as \$23.81 April 25, 1966. The position was awarded to A. M. Rosenberger, Bulletin No. 1851. Rosenberger on April 29, 1966 bid for and was assigned position of Tariff Compiler No. 2. Position of Tariff Compiler No. 3 was again bulletined (No. 1860), and Claimant Vorpapel was awarded the position May 10, 1966.

The Organization contends the rate of the position of Tariff Compiler No. 3, when established as a new position April 25, 1966, should have been \$24.31 — the then existing rate of Tariff Compiler No. 2, and not at the lower rate of \$23.81; that Rule 53 was violated, it provides:

"RULE 53.

Wages for new positions shall be in conformity with the wages for positions of similar kind or class in the seniority district where

created. If no similar position exists in the seniority district where created, rate shall be in conformity with positions of similar nature in adjoining seniority districts and shall be subject to negotiations."

Carrier contends that Rule 53 has no application as the position in question was not a new one. It was an old position re-established on April 25, 1966, awarded to Rosenberger who subsequently vacated same and then awarded to Claimant; that the rate and duties bulletined are the same as they had been and that the rate differential between Tariff Compiler No. 1 and 2 and 3 has been preserved and maintained. Further, Carrier objects to the procedural handling of the claim on the property by the Organization and contends the instant claim should be dismissed as being in violation of Article V of the August 21, 1954 National Agreement by not being properly appealed within 60 days; that the claim before us was submitted to the wrong officer and is therefore a claim of first impression not presented at the proper level; and, that portion of the Claim No. 3 which reads "and/or his successors" does not identify the employe on whose behalf the claim is made as required by Article V.

Upon the record before us we find no procedural defects in the handling of the claim on the property that would require a dismissal by this Board under Article V of the August 21, 1954 National Agreement. Nor do we find a substantial variance between the claim as presented on the property and as here. The nature of the claim is that the rate of pay was improperly bulletined for Tariff Compiler No. 3 by Carrier and is a continuing claim and violation. The substance of the claim before the Board is the same as contained in the original claim by the Organization. Carrier has not been prejudiced thereby, therefore, the Board does have jurisdiction in the instant dispute and will so adjudicate on the merits.

We believe it is material to the issue to determine if a new position was created or if the position was an old position re-established by Carrier. This determination will establish the applicable rate of the position.

It is unquestioned that the position of Tariff Compiler No. 3 was "abolished" December 7, 1965. When this position was "abolished," in the opinion of the Board, that was the end of the position and the rate. The position bulletined in the instant case was described as a "New Position" and "Permanent" as evidenced by the Bulletin itself under date of April 25, 1966 and certainly was not a re-establishment of the old abolished position. When Rosenberger vacated the position April 29, 1966, Carrier again bulletined the position evidencing no intention of re-establishment but as a new position. It amounted to a creation of a new job and the rate of pay was governed by Rule 53 which requires wages "to be in conformity with the wages for positions of similar kind or class in the seniority district where created." To hold otherwise in the instant dispute would permit Carrier to circumvent the intent of the rule. See Awards 2239, 4127, 4080, 2683 and 14990 wherein the Board has passed upon the subject matter of this dispute involving a similar and identical rule.

The position is a new one and Carrier should have bulletined the rate of pay in conformity with the wages of Tariff Compiler No. 2 as the work being of similar kind or class and within the same seniority district. Rule 53 does not require the work or duties to be the same as or identical to like positions in existence within the same seniority district.

We must therefore, under the facts, circumstances, rules and prior awards cited in the instant dispute find a violation of the Agreement and the claim should be sustained. That portion of the Claim No. 3 which states "and/or his successors" sufficiently identifies the employe on whose behalf the claim is made although not specifically named.

**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 the Agreement was violated.

#### AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 1st day of November 1968.