

AWARD No. 3
(Case No. 3)

BEFORE
PUBLIC LAW BOARD NO. 119

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

and

THE DETROIT AND TOLEDO SHORE LINE RAILROAD COMPANY

STATEMENT OF CLAIM:

(1) Carrier violated the provisions of the effective Clerks' Agreement when effective January 3, 1966 it established a position of Key punch Operator in the Data Processing Center, Lang Yard, Toledo, Ohio, with a rate of pay of \$23.5624 per day, which is not in conformity with the rate of pay for a position of similar kind or class.

(2) Carrier shall now be required to correct the rate of pay for the position of Key punch Operator in the Data Processing Center, Lang Yard, Toledo, Ohio to \$25.72 per day, retroactive to January 3, 1966, and shall pay Evelyn L. Derg and/or her successor or successors, in interest, namely, any other employe or employes who may have stood in the same status as claimant, and who were adversely affected, the difference between the established rate of \$23.5624 per day and the corrected rate of \$25.72 per day, retroactive to January 3, 1966.

(3) Carrier shall now be required to rebulletin the position of Key punch Operator in the Data Processing Center at Lang Yard, Toledo, Ohio and the successful applicant be compensated the difference between what he has earned and that which he would have earned had the position been established and bulletined at the proper rate of pay, retroactive to January 3, 1966.

JURISDICTION:

The jurisdiction of this Board is set forth in its Award No. 1. The statement of jurisdiction therein is incorporated herein by reference thereto.

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OPINION OF BOARD:

Rule 41 of the Agreement, with Caption "Rates for New Positions", reads:

"(a) Rates of pay for new positions shall be in conformity with rates of pay for positions of similar kind or class in the seniority district where created.

"(b) Except when changes in rates result from negotiations for adjustments, the changing of the rate of pay of a specified position shall constitute a new position."

Per Bulletin #56, dated December 24, 1965, Carrier created a new position of Keypunch Operator in its Data Processing Center for which it set the rate of pay at that of a Train Clerk. Clerks contend that the new position was similar in kind or class to that of the existing position of Machine Operator #1 in the Data Processing Center which was paid at a higher rate than a Train Clerk position; therefore, Carrier should have set the rate for the newly created position of Keypunch Operator to correspond with that of the Machine Operator #1 position.

The duties of the three positions, as bulletined, are:

<u>Data Processing Center</u>	<u>Data Processing Center</u>	<u>Yard Office</u>
Machine Operator #1 Duties - Per Bulletin #36 - dated 7/23/65	Keypunch Operator Duties - Per Bulletin #56 - dated 12/24/65	Train Clerk Duties - Per Bulletin #43 - dated 9/3/65
"Operate IBM key punch machine to produce cards with information involving payroll, interline auditor settlements, per diem, accounting and other key punch work necessary to produce origin card flow. Ability to operate key punch machine at minimum of 50 wpm, Operate such other IBM machines in addition to key punch as required, and other duties incidental thereto as directed."	"Keypunch - Verify Interpret tape for origin card flow. Applicant must be qualified and capable of typing at 60 wpm, and successfully pass typing test respectively before being assigned to the position."	"Check trains and deliveries, Key punch with qualification of not less than 50 wpm, operate card to tape machine and other associated and incidental yard office clerical duties in yard office at Lang Yard as directed."

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The issue presented is whether the Keypunch Operator and Machine Operator #1 positions are "of similar kind or class." Clerks allege it is. Clerks have the burden of proof.

We point out that in the posture of the case before us we have not been petitioned to decide whether the Keypunch Operator and Train Clerk positions are of a "similar kind or class."

From the material and relevant evidence of record we find in the bulletined duties of the positions involved only one specific similarity in the duties: operating a keypunch machine.

Unchallenged is Carrier's averment in its Submission that in addition to operating a key punch machine the occupant of the Machine Operator #1 position is required to operate: (1) sorter, (2) collator, (3) accounting machine, (4) verifier, (5) summary punch, (6) reproducer and (7) calculator. Further, this averment finds support in the bulletined duties of the Machine Operator #1 position which by comparison are more extensive than the bulletined duties of the Keypunch Operator position.

We find that Clerks failed to satisfy its burden of proof. Therefore, we are compelled to dismiss the Claim for failure of proof.

FINDINGS:

Public Law Board No. 119, upon the whole record and all the evidence, finds and holds:

1. That Carrier and Employee involved in this dispute are respectively Carrier and Employee within the meaning of the Railway Labor Act, as approved June 21, 1934;
2. That this Board has jurisdiction over the dispute involved herein; and,
3. That the Claim must be dismissed for failure of proof.

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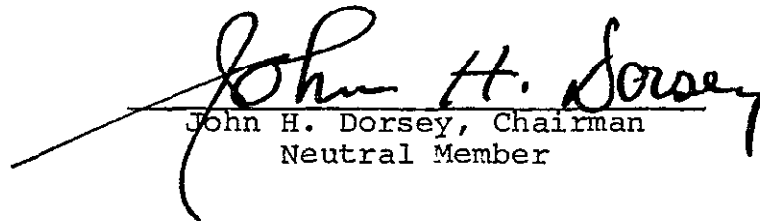
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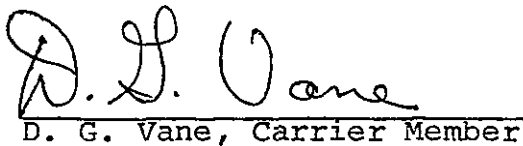
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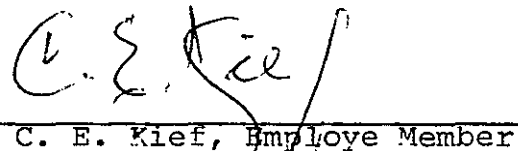
Claim dismissed for failure of proof.

ORDER

It is hereby ordered that the effective date of the Award, supra, for application of Section 3, First (q) (r) and Section 3, Second, of the Railway Labor Act, as amended, shall be the date, shown below, on which the Award issued.


John H. Dorsey, Chairman
Neutral Member


D. G. Vane, Carrier Member


C. E. Kief, Employee Member

Dated at Chicago, Illinois, this 21st day of February, 1968