

NATIONAL RAILROAD ADJUSTMENT BOARD
Third Division

John P. Devaney, Referee

PARTIES TO DISPUTE:

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

STATEMENT OF CLAIM.—

"Claim of J. S. Driesbach that position of yard clerk at Yakima should be rated at \$5.04 per day instead of \$4.88 per day effective May 20, 1935, based on Rules 78 and 88 of Clerk's Schedule."

STATEMENT OF FACTS.—The parties have jointly certified to the following facts:

"Prior to December 18, 1932, the Division terminal between the Pasco and Tacoma Divisions was located at Ellensburg, Washington. Yakima was then on the Pasco Division. Effective December 18, 1932, the Pasco Division was abolished and the Division terminal between the Idaho and Tacoma Divisions was moved to Yakima, which latter point then became a part of the Tacoma Division. When Ellensburg was the Division terminal yard clerks at that point were paid \$4.88 per day which was the prevailing rate for yard clerks on the Tacoma Division. Prior to December 18, 1932, two yard clerks were employed at Yakima and were paid \$5.04 per day. When Yakima was established as a Division terminal there was a consolidation of Yakima and Ellensburg yard office forces. The yard office force at Yakima after the consolidation consisted of two yard clerks at \$5.04 per day and two yard clerks at \$4.88 per day.

"The force of yard clerks employed at Yakima since December 18, 1932, has been two yard clerks at \$5.04 per day and two at \$4.88, except that between August and January each year one additional yard clerk at a rate of \$4.88 per day has been employed. Mr. Driesbach at the time he presented this claim occupied one of the two yard clerk positions paying rate of \$4.88 per day."

An Agreement between the parties bearing effective date of August 15, 1922, is in evidence, from which is cited Rules 78 and 88 reading as follows:

"**NEW POSITIONS—RULE 78.** The wages for new positions shall be in conformity with the wages for positions of similar kind or class in the seniority district where created."

"**RATES—RULE 88.** 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."

POSITION OF EMPLOYEES.—Employees contend that prior to December 6, 1932, there were three positions of yard clerks at Yakima, rate \$5.04 per day, and that after the consolidation on December 18, 1932, it was necessary to establish continuous service and the additional position put on should have been rated at \$5.04 per day instead of \$4.88 per day.

POSITION OF CARRIER.—Carrier contends that at the time of discussion with the committee on the general consolidation question, verbal understanding was reached as to the rate to be established and that this is evidenced by the fact that no protest or claim was filed until May 20, 1935, or two and one-half

years after the consolidation, when the present claimant secured the position in question through the exercise of his seniority rights.

OPINION OF BOARD.—It appears from the record that there was a rate of \$4.88 per day in the Ellensburg Yard at the time of the consolidation heretofore mentioned. It is sufficiently established that this rate was for yard clerks who performed outside work such as checking, marking cars, etc. It is also apparently the fact that the rate for train desk work at Ellensburg which includes miscellaneous office yard clerk's duties was, at the time of the consolidation, \$5.15 per day. There were three of these train desk clerks who handled waybills, made reports, and gave instructions governing the movement of cars and checked train conductors in and out. These positions carried the title of Assistant Chief Clerk and the occupants thereof performed duties similar to those of the three yard clerks' positions at Yakima, which carried a rate of \$5.04 per day each.

The evidence further established that the occupant of the position in question here performs work of similar kind or class to the duties of the two yard clerks whose assignments immediately precede and follow the assignment of the position in controversy. The three positions complete twenty-four hours continuous service of this kind or class of work. This fact clearly brings the position within Rule 78 of the agreement.

Moreover it is not established as contended by the carrier that there was an understanding or agreement at the time of the consolidation of Ellensburg with the Yakima Yard as to rates of pay. Thus the matter must be considered without reference to such alleged understanding.

Our conclusion is that the evidence in this case shows that as a result of the consolidation of the two yards it was necessary that the same service which had existed in the Yakima Yard prior to December 6 (the date when the second trick position was discontinued), be restored. Therefore when the position in question was restored on December 18th, it constituted the reestablishment of a position previously in existence carrying the rate of \$5.04 per day and such rate should likewise have been reestablished.

Therefore the claim of the employe should be sustained.

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 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 when the position in question was restored December 18, 1932, it constituted the reestablishment of the same position existing prior to December 6, for which there was an agreed upon rate of pay of \$5.04 per day, and such rate should have been reestablished therefor.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: H. A. JOHNSON
Secretary

Dated at Chicago, Ill., this 22nd day of April, 1937.