

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

PARTIES TO DISPUTE:

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

SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: "Claim of Mr. P. F. Duvall, Rate Clerk, Office of Auditor of Freight Rates and Divisions, Atlanta, Georgia, for the difference in the rate of pay on position bid in by him in that office, rate \$5.80 per day, and the rate of pay on position he was assigned, rate \$6.78 per day, for the number of days worked during the months of July, August and September, 1935."

STATEMENT OF FACTS: The employes stated the facts to be:

"Effective July 1, 1935, Mr. William Talbot, Jr., Rate Clerk, Office of Auditor of Freight Rates and Divisions, Atlanta, Georgia, rate \$6.78 per day, was granted a ninety (90) days leave of absence.

"Mr. P. F. Duvall was regularly assigned to a position of Rate Clerk in the office of Auditor of Freight Rates and Divisions, the rate of which position was \$5.80 per day.

"On July 1, 1935, concurrent with the absence of Mr. Talbot from his position paying \$6.78 per day, due to above mentioned leave of absence, Mr. Duvall was instructed by his Superior Officer to occupy the desk vacated by Mr. Talbot and was thereafter assigned to or performed the duties and responsibilities heretofore assigned to and performed by Mr. Talbot.

"For the service performed by Mr. Duvall on the desk and duties of Mr. Talbot's position he was paid at the rate of \$5.80 per day.

"Employes claim that Mr. Duvall should have been paid at the rate of \$6.78 per day which was the established and agreed upon rate for the duties regularly assigned to and performed by Mr. Talbot."

The facts, as stated by the carrier, are set out in its position.

There is in evidence an agreement between the parties, bearing effective date of September 1, 1926.

POSITION OF EMPLOYES: "At the time this complaint originated, July 1, 1935, there were 14 positions assigned to the statement of differences section in the office of Auditor of Freight Rates and Divisions, Atlanta, Georgia.

"As hereinbefore shown, it has always been our practice to make such transfers of work from one employe to another in the respective sections of the Rate Department, and it has never heretofore been argued that these transfers made necessary any adjustments in rates of pay.

"The Members of the Board are, of course, cognizant of the reasons for different rates being paid to employes performing the same class of work, i. e., that this resulted primarily from the basis followed prior to the effective date of any clerks' agreement on our lines, of making increases in monthly rates of individual employes on basis of merit and capacity, and these monthly rates were later converted to a daily basis under Rule 66 and continued in effect by Rule 86 of the Clerks' National Agreement, which became effective January 1, 1920, since which time general adjustments have been made through orders of governmental bodies, agreement between the representatives of the employes and the management, and arbitration proceedings.

"The attention of the Board is also called to the fact that if, as contended by the employes, there is a definite and specific assignment of duties to each of the employes in the Statements of Differences Section (which carrier denies), then the permanent transfer of work from one employe to another would have the effect of abolishing both positions and creating two new positions, the rates for which would have to be fixed in the manner provided in Paragraph (b) of Rule 20, Article IX of clerks' agreement, and the result could only be that the senior employe who now enjoys the higher rate would have his rate reduced and the junior employe would have his rate correspondingly increased. Such adjustments in rates of pay have never been made in connection with the transfer of work from one employe to another in the respective sections of the Rate Department. This fact alone makes it manifest that there is no merit in the employes contention that the employes in question have specific assignments of duties, and, of course, it naturally follows that if adjustments in rates are not required in cases of permanent transfers of work, they could not be required in cases of temporary transfers of work.

"In the light of the facts given, it will also be obvious to the Members of the Board that there was no violation of Rule 4-(i) of the agreement.

"For the reasons hereinbefore given, the claim of the employes is without merit and should be denied."

OPINION OF BOARD: The evidence in this case discloses that during the period in question, P. F. Duvall, in addition to devoting a total of thirty-one hours of his time between July 8 and July 31, in working company material waybills, his previous duties before being assigned to statement of difference work, performed some of the duties regularly assigned to the position from which W. H. Talbot was on leave of absence. However, the evidence is not clear as to the extent to which Duvall performed Talbot's duties. On such days that he devoted the majority of his time to the duties of Talbot's position he should have been paid the rate thereof.

The parties should jointly investigate and determine the days on which Duvall performed Talbot's duties during the latter's absence in the months of July, August and September 1935, and on such days that he devoted a majority of his time thereto, he should be paid the difference between his rate of pay and the rate of Talbot's position.

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 employe involved in this dispute are respectively carrier and employe 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 case be remanded to the parties for joint investigation and disposition in accordance with above "Opinion," with the privilege of reinstating claim should it not be disposed of.

AWARD

Case remanded in accordance with the above "Opinion."

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 3rd day of February, 1938.