

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Frank M. Swacker, Referee

PARTIES TO DISPUTE:

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

**THE CHICAGO, ROCK ISLAND AND PACIFIC
RAILWAY COMPANY**

(Frank O. Lowden, James E. Gorman, Joseph B. Fleming, Trustees)

STATEMENT OF CLAIM: "Claim for increase in rates of pay of \$15.00 per month, effective July 13th, 1936, for positions of:

2nd trick eastbound yard clerk Herington, Kans.
2nd trick southbound yard clerk, Herington, Kans.
3rd trick eastbound yard clerk, Herington, Kans.
3rd trick southbound yard clerk, Herington, Kans.

and similar claim, effective September 1st, 1936, for positions of:

1st trick eastbound yard clerk, Herington, Kans.
1st trick southbound yard clerk, Herington, Kans.

account increased duties and responsibilities."

EMPLOYEES' STATEMENT OF FACTS: "For a number of years prior to July 13th, 1936, there was maintained at Herington yard two refrigerator inspectors, rates of pay and assigned hours as follows:

\$172.00—7:00 A. M. to 7:00 P. M.
157.00—7:00 P. M. to 7:00 A. M.

Their duties consisted of inspecting all perishable loads to see that proper refrigeration and ventilation maintained through Herington terminal, making Form 100 Reports, keeping book record of all perishable moving through Herington, supervising icing any cars requiring ice and the proper application of heaters.

"On July 13th, 1936, the \$157.00 position was discontinued and on September 1st, 1936, the \$172.00 position was discontinued and the work distributed among and is being performed by the six yard clerks, depending upon arrival time of perishable loads requiring this service, whose assignments and rates of pay are as follows:

1st trick eastbound yard clerk,	6:30 A. M. to	2:30 P. M.—\$127
1st trick southbound yard clerk,	8 A. M. to	4 P. M.—\$127
2nd trick eastbound yard clerk,	4 P. M. to	12 Mid. —\$117
2nd trick southbound yard clerk,	3:30 P. M. to	11:30 P. M.—\$117
3rd trick eastbound yard clerk,	12:01 A. M. to	8 A. M.—\$117
3rd trick southbound yard clerk,	12:01 A. M. to	8 A. M.—\$117"

"Rule 64 of the clerical agreement outlines the manner in which monthly rates will be figured for monthly rated positions, and this is the basis on which the six Yard Clerk positions are rated, but this rule does not apply to Refrigerator Inspectors carried on the payroll of the Superintendent of Refrigerator Service, the method of figuring their monthly compensation being governed by the memorandum agreement on page 41 of the clerical agreement effective January 1, 1931.

"The assigned hours of the Refrigerator Inspectors at Herington, as given to the clerks' representative and concurred in by him when the memorandum agreement of December 5, 1930, on page 41 of the agreement, was consummated, were 12 hours each, daily, at the rate of \$172.00 and \$157.00 per month respectively (see Exhibit 'A' attached). When assigned, these refrigerator inspectors take care of all necessary work of their classification during their tour of duty, but their actual hours of work varies from day to day according to number of shipments under refrigeration that pass through the station where they are assigned. The regular station forces assist the system refrigerator inspectors when such assistance is necessary.

"To require reinstatement of the positions of Refrigerator Inspectors at Herington, Kansas, would only serve to burden the carrier with an unnecessary expense; and since the maintenance of such positions is not obligatory under the clerical schedule, nor has the schedule been violated in any way because of discontinuance of these Refrigerator Inspectors, the claim of the employees should be declined."

OPINION OF BOARD: This claim grows out of the arbitrary action of the carrier in abolishing two positions and reassigning the duties thereof in disregard of the provisions of Rule 69 and the joint interpretation thereof, requiring conference, and which is the subject of the claim for reinstatement of the positions which has been directed by the preceding award, No. 610. While there is evidence of some increase in the duties and responsibilities and change in the character of the work, due to the failure to hold such conference, the Board is without sufficient evidence to determine what adjustments should be made and consequently should remand the case for conference with the right, in case of failure to agree, to the petitioners to return the matter to the Board with such evidence as may be developed by the conference.

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 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 case is remanded for conference and adjustment in conformity with rules.

AWARD

Case remanded for conference and adjustment as indicated by Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 18th day of April, 1938.