

**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 rate of pay of Chief Yard Clerk, Topeka, Kans., from \$137.00 per month to \$150.00 per month, effective July 8th, 1935, account increase in duties and responsibilities."

EMPLOYEES' STATEMENT OF FACTS: "On July 8th, 1935, Night Yardmaster at Topeka, Kans., was taken off and the Day Yardmaster was assigned to work nights. At this time the Chief Yard Clerk, assigned to work 8:00 A. M. to 4:00 P. M., was assigned additional duties not previously handled by the Chief Yard Clerk, but by the Day Yardmaster, as follows:

Deliver switch orders to engine foremen from agent's office and handle car orders placed direct with yard by shippers.

Make out list of cars for movement on trains as directed by dispatcher, which previously handled verbally by yardmaster.

Instruct crews where to set out and pick up in the absence of foot-board yardmaster.

Advise Rock Island tower of eastbound freight trains departing and give tower information as to what track westbound freight trains are to use.

See that cars are properly lined up for trains picking up.

Handle switchmen's extra board during his tour of duty, which work was, to some extent, handled on this job prior to the time yardmaster was taken off."

POSITION OF EMPLOYEES: "Rule 69 of Clerks' Agreement as revised and effective January 1st, 1931, reads as follows:

'RULE 69. ADJUSTMENT OF RATES. When there is a sufficient increase or decrease in the duties and responsibilities of a position or change in the character of the service required, the compensation for that position will be properly adjusted, but established positions will not be discontinued and new ones created under different titles cover-

at Topeka are operated during the hours when the Night Yardmaster is on duty, and the Chief Yard Clerk has no responsibility in connection with such trains other than ordinary yard clerk's duties.

"Notifying the tower of incoming and outgoing trains: The physical layout in Topeka yard is such that the towerman requires advance notice of the movement of a train so that he may line the route for east-bound trains over the Kaw River bridge. The telephoning of this information to the towerman has no actual relation to the movement of the train but is merely advice to the towerman that the train is ready to move and when the route is clear the levers in the tower are manipulated by the towerman and the train is moved according to tower signal indications.

"The question of which tracks are to be used by west-bound trains is quite generally decided by the Footboard Yardmaster, or Yardmaster, who notifies the yard clerk on duty that when a certain train is reported to arrive the towerman is to be notified to head it in on a certain track. No particular responsibility is required of a Chief Yard Clerk in this respect, as he is in the majority of cases simply relaying information already given him by the Yardmaster.

"The handling of switchmen's extra board is mentioned. At a point such as Topeka, where only five switch crews are worked, there is but little work of this character. However, attention is directed to the fact that at El Reno, Oklahoma, one of our large terminals not only the switchmen's extra board, but a board for train crews working four ways out of that point is maintained by crew clerks, whose rate is \$134.50 per month; and certainly it can not be contended that the handling of a small board for switchmen at a point like Topeka constitutes work which would warrant an increase in the rate of a \$137.00 position. The handling of the switchmen's extra board is no more than is required of similar positions paying a lesser rate of pay at many other points where such crew boards are maintained.

"Thus it will be seen there is no warrant for contending that the rate of the Chief Yard Clerk at Topeka should be increased, because the clerical duties enumerated in the joint statement of facts which he assumed on the day that Yardmaster position at Topeka was abolished were all of the kind and character generally recognized as the work which may be required of yard clerks and which are handled by yard clerks even at points where yardmasters are on duty.

"The claim of the employees should be declined."

OPINION OF BOARD: Evidence of record discloses that there has been a sufficient increase in the duties and responsibilities of the position of Chief Yard Clerk at Topeka, Kansas, to warrant an upward adjustment in compensation thereon, under the provisions of Rule 69. Although the evidence is meager, such as it is consisting in action taken at Booneville, Arkansas, under somewhat analogous circumstances, it would appear to warrant an increase of \$10.50 per month in the position of Chief Yard Clerk.

Further, Rule 43, cited by the carrier, by its language, has no application where rates of pay or rules of the agreement are involved.

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 an increase of \$10.50 per month should be granted effective July 8, 1935; and further, Rule 43 has no application in the instant case.

AWARD

Claim sustained to the extent 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.

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**INTERPRETATION No. 1 TO AWARD No. 613,
DOCKET No. CL-609**

NAME OF ORGANIZATION: Brotherhood of Railway and Steamship
Clerks, Freight Handlers, Express and Station Employees

NAME OF CARRIER: The Chicago, Rock Island and Pacific Railway
Company

Upon application of the representative of the carrier involved in the above award, that this Division interpret the same in the light of the dispute between the parties as to its meaning, as provided for in Sec. 3, First (m) of the Railway Labor Act, approved June 21, 1934, the following interpretation is made:

The first contention of the respondent is that the matter was beyond the jurisdiction of the Board, in that it consisted in a change in rate of pay, to make which the Adjustment Board is without jurisdiction, such as there is being reserved to the Mediation Board under Section 5, First (a). In my opinion, this contention is without merit. The line of demarcation as between the matters confided to the Adjustment Board and those confided to the Mediation Board is quite clear. Briefly stated, the functions of the Mediation Board relate to proposed changes in the agreements themselves. The functions of the Adjustment Board are **not to change** existing agreements, but to interpret them, adjudicate upon complaints alleging violation thereof, and make awards thereon. The instant case clearly falls within the latter category. It is a complaint that conditions have arisen which under the provisions of Rule 69 called for certain action by the carrier; that the carrier refused to comply with the provisions of that rule and thereby violated it, and an adjudication is asked of such violation and an award rectifying such violation. This is clearly within the scope of the Adjustment Board's jurisdiction. To contend that the Board could go only so far as to adjudicate a violation of Rule 69 but be without power to afford a remedy, would be contrary to all established principles of judicature. The mere fact that the remedy in the instant case results in a change in rate of pay does not have the effect of taking the controversy without the cognizance of the Adjustment Board. The Adjustment Boards are daily rendering decisions having precisely that effect. Carriers themselves are daily making hundreds of wage adjustments growing out of reclassifications of positions. It is this very fact which is responsible for the limitation in the prohibitory provisions of Section 2, Seventh, against changes in rates of pay of employees "as a class." But for that limitation, every unilateral change in rate of pay resulting from reclassification by a carrier would constitute a crime. The principal difference between this and the common run of cases is that ordinarily there is a fixed basis automatically applicable to the reclassification. Thus, for instance, in a telegraph schedule there may be a rate shown at a certain town for agent telegraph, and another rate agent non-telegraph. The agency may change as a fact from the one classification to the other, and automatically a specific new rate becomes applicable. Should the carrier, notwithstanding such factual change, refuse

to make the reclassification, no one would contend that the Adjustment Board was without authority to enforce the agreement. So, under a locomotive schedule, certain locomotives are specified by number as of certain weight carrying an applicable rate, a superheater or other equipment is added to a particular locomotive, which in effect runs it from its specified weight into the next higher classification, the Board manifestly has power to require the necessary adjustment in pay conformable to the facts.

That there is not in the instant case an automatically applicable new rate is not ground to deprive the Board of jurisdiction. As previously stated, to so consider would amount to holding that the Board could go so far only as to find a violation of the rule but not the extent of the violation. Its action does not constitute in a technical sense the fixing of a rate of pay for the position. Its action is to find as a fact what the value of the increase in the duties and responsibilities of the position and change in the character of the service amounts to. The rule provides that when these conditions arise the compensation "will be properly adjusted." In making the award then the Board is simply carrying out this provision of the rule by applying the amount found as a fact to be the value of the change. There is nothing about this operation that takes the situation without the power of the Board. Other such cases arise. For instance, schedules frequently contain provisions to the effect that an employee will be allowed actual expenses (not a particular amount) under certain conditions; the carrier denies the happening of such conditions and refuses to make payment, and the employee files a complaint before the Adjustment Board. Clearly it is within its power to determine whether the conditions exist, and, if so, ascertain from the evidence the amount of the expenses and make an award thereof.

As to the second contention of the carrier, i.e., that the Board's action is arbitrary in making its finding on admittedly meager evidence: This is a wholly mistaken view as to what is meant by "arbitrary" findings. Arbitrary findings are those wholly unsupported by or directly contradictory of the evidence. The mere fact that the evidence might be meager does not make a finding based thereon arbitrary if the finding is consistent with such evidence. Of course it would be far more satisfactory to the Board to have more evidence than was presented in the instant case, but its paucity was contributed to one hundred per cent by the carrier, which failed to produce any evidence whatever concerning the value. In such circumstances it is hardly in a position to complain about the Board utilizing what little evidence was presented by the petitioners.

These questions, as you recall, were discussed at the time the award was proposed, and the Referee then expressed the same views he still holds. Consequently, the Referee considers that the carrier's petition is not well found, and should be denied.

Referee Frank M. Swacker, who sat with the Division, as a member, when Award No. 613 was adopted, also participated with the Division in making this interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 1st day of June, 1938.