

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

PARTIES TO DISPUTE:

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

CHICAGO, SAINT PAUL, MINNEAPOLIS & OMAHA
RAILWAY COMPANY

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated agreement rules when it failed and refused to reestablish position of Clerk, Desk No. 2, Rate \$4.56 per day, and on May 1, 1935 did establish a position of Clerk, Desk No. 9, Rate \$3.75 per day, to perform the duties that were formerly assigned to position of Clerk, Desk No. 2, at Blue Earth, Minnesota, and that
- (2) The Carrier shall be required to reimburse employees affected for wage losses sustained through such rules violation.

NOTE: Rates referred to in above claim subject to increase of 40¢ per day in accordance with National Wage Agreement of August 4, 1937."

EMPLOYES' STATEMENT OF FACTS: "For many years prior to December 1st, 1934 there was maintained at Blue Earth, Minnesota Station a clerical position identified as Desk No. 2 and rated at \$4.56 per day.

"Such classification and rate was established by agreement between the Carrier and the Brotherhood as a result of Wage Agreement effective June 16th, 1928.

"This position was so classified and rated by agreement based upon the following duties and responsibilities:

"Clerk.....\$4.56 per day

Take care of all cash and cash accounts
Revise all waybills
Make all monthly commodity reports
Make C. St. P. M. & O. Monthly local interline received and forwarded abstract reports
Make out cash remittances
Handle all checks
Make out C. St. P. M. & O. and C. & N. W. balance sheets.

"As a result of the depression this position was abolished in December 1934 and the duties remaining to be performed were assigned to the Agent in violation of the seniority rights of clerical employees but no protest was filed against such violation at that time.

the Carrier has shown that there has been no change of rate and that the spreading of the lump sum of \$67,500.00 on June 16th, 1928 did not change the rate except of certain positions to which additional amounts were allocated, there having been no change on Desk 9.

"The Carrier disputes the committee's statement that the Railway Company violated the principles contained in Rules 59 and 60. The only error that could be charged against the Carrier is that in restoration of Desk 9, the Railway Company did not fully comply with Rule 57, reading as follows:

"The rates of pay for new positions shall be in conformity with the rates for positions of a similar kind and class in the seniority district where created, consideration being given to local conditions affecting rates of pay."

but as shown, an offer to adjust the claim at rate of pay for this position to \$4.16 per day has been made to the committee on numerous occasions and in each instance this offer has been refused.

"This claim was originally presented to the Carrier on June 11th, 1935, and, therefore, we submit that a fair adjustment in accordance with the provisions of the schedule would be payment of rate of \$4.16 per day, effective June 4th, 1935—a period of seven days previous to the date of presentation, as per Rule 26."

OPINION OF BOARD: Based on the facts and circumstances in this particular case, and not establishing a precedent with respect to retroactive compensation, the Board is of the opinion that position known as Desk 9 at Blue Earth, Minn. was properly established and should, on and after June 11, 1935, have been rated at \$4.16 per day, subject to increase of 40¢ per day, effective August 1, 1937. The occupant of position known as Desk 9, from June 11, 1935 to August 1, 1937, should be compensated for the days worked the difference between \$3.75 and \$4.16 per day and, subsequent to August 1, 1937 should be compensated for the difference between \$4.15 and \$4.56 per day.

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 position known as Desk 9 was properly established and the occupant of said position, from June 11, 1935 to August 1, 1937, shall be compensated for the days worked the difference between \$3.75 and \$4.16 per day and, subsequent to August 1, 1937, shall be compensated for the days worked for the difference between \$4.15 and \$4.56 per day.

AWARD

Position known as Desk 9 was properly established and occupant of said position, subsequent to June 11, 1935, shall be compensated in accordance with the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 21st day of June, 1939.