

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**

SOUTHERN PACIFIC COMPANY (PACIFIC LINES)

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that James E. Joyce, Claim Investigator, Freight Claim Agent's Office, San Francisco, should be paid at rate of \$7.57 per day from July 19, 1937 (date of claim) plus 40¢ from August 1, 1937, account violation of Agreement rules."

EMPLOYEES' STATEMENT OF FACTS: "At the time of the 1927 Arbitration Award, effective as of January 1, 1927, there were a total of fifteen (15) positions comprising the Paid Claims Bureau among which was Position E-6 (Desk 29), occupied by Mr. H. V. Patterson, at a rate of \$7.57 per day.

"On or about March, 1929, Mr. H. V. Patterson was assigned to Position E-5, rate of \$8.09 per day, and the duties formerly performed by Mr. H. V. Patterson were assigned to Mr. F. Kiehne, who occupied Position E-8.

"Some time in 1931, Mr. F. Kiehne was returned to his former assignment and Mr. James E. Joyce was assigned to duties formerly performed by H. V. Patterson and paid rate of \$6.42 per day instead of rate of \$7.57 per day.

"When the C-21 Final became effective January 1, 1927, and Job E-6 was assigned the rate of \$7.57 per day, Mr. H. V. Patterson was in charge of Station Agent Claims (Desk 29) and was awarded the rate of \$7.57 per day.

"The detail duties of Job E-6 consisted of:

1. Handling through correspondence originated and dictated by the incumbent, the following matters:
 - A. Writing to foreign line officials and agents and to Southern Pacific Company officials and agents to establish by investigation essential facts necessary to proper distribution of amount paid;
 - B. Writing letters to the public for necessary supports and records; collecting amounts which investigation determined had been incorrectly or improperly paid; and
 - C. Writing to Southern Pacific Company legal department with a summarization of the facts in the claim developed by the investigation and recommending the final disposition to be

the present time is handling Station Agents' Claims, making no reference to any other duties or responsibilities. This letter is reproduced as Carrier's Exhibit '6.'

"We next direct attention to correspondence in October, 1938, between Chief Clerk Rickey and Head Clerk Bork of the Paid Claims Bureau, showing that the duties performed by Investigators handling Station Agents' Claims is the same now as on January 1, 1927. (See Carrier's Exhibit '7.')

"Summing up the facts and supporting evidence in this case, we find.

"1. That on January 1, 1927, date rates of pay were established for positions of Investigators in Paid Claims Bureau by Arbitration Award, Mr. Joyce was assigned to Position E-15, rate \$5.84 per day, and handled Station Agents' Claims.

"2. That on June 1, 1928, Mr. Joyce was assigned to Position E-12, rate \$6.42 per day, and thereafter performed the same duties in handling Station Agents' Claims as he performed on January 1, 1927.

"3. That when Positions E-6, E-9, E-13 and E-15 were abolished, it did not have the effect of increasing the duties and responsibilities of Mr. Joyce in any manner; in other words, he continued to perform the same duties as performed on January 1, 1927 subsequent to the abolishment of said positions.

"4. That on September 30, 1934, Organization in communication addressed to Mr. J. R. Nixon, Freight Claim Agent, acknowledged that the correct rate for Position E-12, held by Mr. Joyce, was \$6.42 per day (See Carrier's Exhibit '1').

"5. That at the present time Mr. Joyce is performing the same work and has the same responsibilities as he had on January 1, 1927.

"6. That as there has been no change in Mr. Joyce's duties and/or responsibilities since January 1, 1927, there is absolutely no basis for claim presented.

"The Carrier, therefore, requests that the Board deny claim."

There is in evidence an agreement between the parties bearing effective date of February 1, 1922.

OPINION OF BOARD: The record in this case discloses that by the wage agreement of January 1, 1927, a rate of pay of \$7.57 per day was established for position of Investigator, known as position No. E-6; that such position was then occupied by one H. V. Patterson, and that all clerical positions were increased five cents per hour or forty cents per day by the general wage increases effective August 1, 1937, thereby establishing the rate of \$7.97 per day for the position in question. It is also shown that on or about March 1929, Mr. Patterson was assigned to position No. E-5, and the position vacated by him (E-6) was, for a period thereafter, occupied by a Mr. F. Kiehne, who, prior thereto, had occupied position No. E-8, rate \$7.41 (now \$7.81) per day.

Petitioner states that when Mr. Patterson, later Mr. Kiehne, occupied position No. E-6 (referred to as Station Agent's Desk or Desk 29), it was necessary that they have a number of assistants, among which was the claimant, Mr. James E. Joyce, whose job was then designated as E-15 and rated \$6.23 per day as of January 1, 1927; that Joyce was later assigned to position No. E-12, rate \$6.42 (now \$6.82) per day; that sometime in 1931 Mr. Kiehne was returned to his former assignment and Mr. Joyce was then assigned to position No. E-6, formerly occupied by Patterson, and rated \$7.57 (now \$7.97) per day under the wage agreement of January 1, 1927, but that Joyce continued to receive his former rate of \$6.42 (now \$6.82) per day.

Petitioner contends that sometime in 1931, due to job abolishments and labor-saving systems, such as the use of symbols for indicating moves and the mechanical features in the handling of claims, less important work was eliminated from positions of Investigators and given to lower-rated employees. That this resulted in all of the Station Agent's claims being handled by the claimant, James E. Joyce, who assumed charge of all Station Agent claims with full responsibilities and duties which had previously been assigned to H. V. Patterson on position No. E-6. Petitioner, therefore, contends that under the provisions of Rule 7, claimant Joyce having been assigned to the higher rated duties of position No. E-6, permanently, for which there was a negotiated and agreed upon rate of \$7.57 per day, claimant should receive that rate effective July 19, 1937 (\$7.97 effective August 1, 1937), the date such claim was made upon the carrier.

Carrier's first contention is that this case is an improper claim because it is not the claim submitted to and discussed with the carrier's representative in conferences. Carrier further contends that between June 1928 and December 1930, positions Nos. E-6, E-9, and E-15 were abolished, and that the responsibilities of those positions were not added to any lower-rated positions; that the work on position No. E-6 was transferred to position No. E-5, a higher-rated position (\$8.09 per day), and that none of the duties and responsibilities of the abolished positions were assigned to claimant Joyce, then occupying position designated as No. E-12.

As to the carrier's first contention, that the claim embodied herein is not the same claim presented to the carrier and discussed in conferences with carrier's representatives, it was developed at the oral hearing before the Board on April 13, 1939 that although the representative of the employees, in his letter of November 24, 1937, carrier's exhibit No. 2, stated that certain work formerly performed by other Investigators, whose positions had also been abolished, had been assigned to the claimant on position No. E-12, it was agreed by representatives of both parties that, in conferences subsequently held on the property, it developed there were some errors in connection with the petitioner's claim; that the claim was then corrected, and subsequent to September 1938, has been handled on the property as it is here presented to the Board. Stated differently, the instant claim is the one that has been handled with the carrier since September 1938.

At the hearing before this Board, it also was apparent to the members thereof that the statements of the parties were so conflicting, so widely at divergence as to important facts, that the Board considered it necessary an investigation be held on the property, with the request that the parties jointly develop and try to reconcile the facts as to the duties performed by claimant James E. Joyce, July 19, 1937, as compared with his duties at the time of the wage adjustment of January 1, 1927, and also as compared with the duties of H. V. Patterson as of January 1, 1927.

The transcript of such investigation held in San Francisco, April 28 and May 1, 1939, consisting of 67 pages, was subsequently filed with the Board and made a matter of record in this case. Although the evidence adduced on this investigation is far from harmonious and still rather vague in many details, on the whole record the following facts appear with reasonable certainty; that at the time the rates were agreed upon, January 1, 1927, there were three men on this Desk 29, or so-called Station Agent's Desk; that one man occupied the position designated as E-6, and he was the head of the Desk and distributed the work to his associates, each of whom were lower rated, the claimant having the lowest rating. That the work was distributed by the head of the Desk with regard to its importance, difficulty and responsibility, he assuming the hardest work himself, affording the next man the next hardest and to this claimant the least important of the work. That what with the changes in system taking a lot of routine work off the Desk and the decline in traffic and consequent reduction in number of claims to be worked, the work had so decreased in volume so that by the middle of

1935 it became a one man job, and this claimant has since performed all of the work of the Desk, except as he may have had temporary assistance from time to time, including recently.

From this it follows that he is now doing the higher grade work that was the basis for the fixation of the rate applicable to the occupant of the position E-6, i. e. the head of the Desk, consequently under Rule 7 of the agreement he should have received the compensation agreed upon for the position E-6, i. e., \$7.97 per day from and after September 1, 1938, the date of his amended claim.

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 the claimant, James E. Joyce, is and has been performing the major responsibilities and duties of position formerly designated as No. E-6 and is entitled to be paid at the rate, i. e. \$7.97 per day, applicable, from and after September 1, 1938.

AWARD

Claim sustained for difference in pay between the amount received and \$7.97 per day from and after September 1, 1938.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 4th day of August, 1939.