

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

PARTIES TO DISPUTE:

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

**THE DENVER & RIO GRANDE WESTERN RAILROAD
COMPANY**

(Wilson McCarthy and Henry Swan, Trustees)

STATEMENT OF CLAIM: "Claim of the Brotherhood that proper rate of \$5.55 per day be applied to the position designated as 'Tracer Clerk,' Roper Yard, same to be effective as of August 31, 1938."

EMPLOYES' STATEMENT OF FACTS: "Prior to August 31, 1938 the handling of tracers in the Roper Yard was performed by clerk designated as 'Utility Clerk,' and paid rate of \$5.55 per day, whose time was consumed largely in the handling of tracers.

"Effective August 31, 1938 a position designated as 'Tracer Clerk' was established at rate of \$5.25 per day.

"The Organization protested and requested rate of \$5.55 per day and in negotiating the Carrier offered a rate of \$5.35 per day as a compromise. Such compromise was refused by the Organization and request was made on the Carrier for joint submission of this dispute to Third Division, National Adjustment Board, which request was refused under date of June 5, 1939 with the following letter:

'Your letter of June 2nd, with further reference to dispute involving rate of pay on position Tracer Clerk, Yard Office, Roper, Utah.

'I am unwilling to go beyond the offer of a rate of \$5.35 per day which I feel represented a fair disposition of the case, nor am I agreeable to joining you in submission to Third Division, National Adjustment Board.'

"Under date of October 4, 1939 the employees notified the Carrier of their intention to submit this dispute ex parte."

CARRIER'S STATEMENT OF FACTS: (Contained in Carrier's Position.)

EMPLOYES' POSITION: "Employees contend, and the records prove, that the work assigned to the position designated as 'Tracer Clerk' has for a number of years been assigned to position designated as 'Utility Clerk' and carried a rate equivalent to present rate of \$5.55 per day.

"Rule 80 of the current agreement between the Denver & Rio Grande Railroad and the Brotherhood of Railway & Steamship Clerks, Freight Handlers, Express and Station Employees provides:

from the record of trains in and out—it was the judgment of the carrier the position was similar to and should pay approximately the same daily rate as the Jumbo Clerk. However, investigation developed there was a possibility the duties of the Tracer Clerk might require more knowledge and ability than is ordinarily required of a Jumbo Clerk, with the result that the Tracer Clerks job was rated at \$5.25 per day, while the rate of Jumbo Clerk is \$5.19 per day.

“During discussion of this case the organization claimed in establishing the position of Tracer Clerk the provisions of Rules 70 and 80 of the current agreement were violated. Rule 70 reads:

‘The wages for new positions shall be in conformity with the wages for positions of similar kind or class in the seniority district where created.’

“Rule 80 reads:

‘Established positions shall not be discontinued and new ones created under a different title covering relatively the same class of work for the purpose of reducing the rates of pay or evading the application of these rules.’

“With respect to Rule 70, the Carrier holds it did not violate the provisions of this rule for the reason the rate of pay of the new position—Tracer Clerk—is in conformity with the wages for positions of similar kind or class in the seniority district where created. As above stated, the carrier holds the position of Tracer Clerk is similar to that of Jumbo Clerk.

“In regard to Rule 80 there was no established positions discontinued when the job of Tracer Clerk was created, therefore, this rule has no bearing on the instant case.

“The Carrier contends there is no justification for the rate asked for in this case, and further contends in establishing a rate of \$5.25 per day for the seasonal job of Tracer Clerk, it did not violate any rule of the agreement.”

OPINION OF BOARD: Position of Tracer Clerk @ \$5.25 per day was first established August 31, 1938 and has since been worked seasonally, viz: August 31, 1938 to January 15, 1939 and August 9 to December 23, 1939.

The Employees protested the \$5.25 rate and requested a rate of \$5.55 per day. The Carrier offered a rate of \$5.35, but the Employees refused the offer.

The evidence supports the Employees' contention that the position should have been, under the provisions of Rule 70, rated at \$5.55 per day effective August 31, 1938; however, reparation is subject to the provisions of Rule 33.

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 employee involved in this dispute are respectively carrier and employee 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 of Tracer Clerk, Roper Yard, shall be rated at \$5.55 per day; reparation is subject to the provisions of Rule 33.

AWARD

Claim to be disposed of in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 23rd day of May, 1940.