

Award No. 1280
Docket No. CL-1168

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Ernest M. Tipton, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES
GULF, COLORADO AND SANTA FE RAILWAY COMPANY**

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that the daily basic rate of pay for Position No. 58, Bill-Utility Clerk, Fort Worth, Texas shall be increased from \$5.27 to \$5.96 retroactive to April 10, 1936. (Rates quoted do not include increase of 40 cents per day granted effective August 1, 1937)."

EMPLOYEES' STATEMENT OF FACTS: "Prior to January 24, 1932, there existed in the Local Freight Office at Fort Worth, Texas, among others, three positions, viz:

Position Number	Title	Rate	Principal Duties
57	M. I. T. Clerk	\$6.24	Rating, routing and extending bills of lading covering M. I. T. shipments.
70	M. I. T. Clerk	6.24	Posting tonnage applications on M. I. T. shipments; issuing corrections on overdraft tonnage; rating, routing and billing miscellaneous carload shipments and generally assisting the occupant of Position No. 57.
58	Bill Clerk	5.96	Billing L. C. L. and carload shipments other than M. I. T.

"Effective January 24, 1932 position No. 58 was abolished and the work absorbed by Position No. 70.

"Under date of July 1, 1936, Position No. 58 was reestablished under a new title 'Bill-Utility Clerk' rate \$5.27 per day, duties: billing M. I. T. freight, registering M. I. T. tonnage and generally assisting the M. I. T. Clerk (Position No. 57)."

POSITION OF EMPLOYEES: "There is in evidence an Agreement between the parties, bearing effective date December 1, 1929 in which the following rules appear:

Article XII, Section 1
Article XII, Section 3-a
Article XII, Section 3-b
Article XII, Section 5
Article XII, Section 6

this 'billing' merely involved the transcribing to waybills of data developed by others; it required no initiative or original composition. Further the Carrier submits the rate and classification of a position is not established by the casual wording of a bulletin but rather by the work actually required of the incumbent of that position. As stated above, the incumbent of Position No. 58 is only required to handle the incidental typing of waybills and other records from essential data prepared by the incumbent of Position No. 57. By contrast, the following quoted from a bulletin advertising a vacancy on Position No. 70, demonstrates the specification used when a fully qualified bill clerk is required:

"Those bidding for this position should be a first-class experienced bill clerk, familiar with rates and classifications and fast on typewriter or billing machine."

"The difference is apparent and clearly demonstrates that the 'billing' requirements on Position No. 58 were not of a nature comparable with those of Position No. 70.

"Let us now see whether there were, at the time Position No. 58 was created, any 'position of similar kind or class in the seniority district where created.'

"At that time, there was in existence in this same office, and consequently in the same seniority district, Position No. 89, described as 'typist-utility-bill clerk,' rated at \$5.27 per day. Specifications for that position were:

"Parties bidding on this position must be machine bill clerk and be able to rate and bill packing house products as well as other commodities and should understand classification and be able to use comptometer and attend any other duties that may be assigned."

"It should be noted that this position required knowledge of rates and classifications, which was not required of Position No. 58, yet it paid only \$5.27 per day.

"A more nearly comparable position existed at Dallas, Texas, in the same seniority district; being Position No. 415, designated as 'utility clerk,' and paid \$5.27 per day. The specifications for that position were:

"Applicant for this position should be able to assist Bill Clerks, and must be able to make good use of the typewriter. Duties consist of machine billing, preparing abstracts, checking freight, and such other duties as may be assigned."

"After consideration, the Carrier concluded that these two positions presented the closest 'similarity' to new Position No. 58, and accordingly applied to the latter position the rate paid on those two; i. e., \$5.27 per day. The Carrier submits that its conclusion is clearly supported by the specifications quoted above, and that it has completely fulfilled its obligation under Section 5, Article XII. The claim of the Employees should accordingly be denied."

OPINION OF BOARD: Prior to January 24, 1932, there existed in the local freight office at Fort Worth, Texas, among others, three positions. The positions' numbers, titles, rates of pay and duties are shown by Employees' Exhibit "A," which is admitted by the Carrier to be substantially correct. The essential part of Exhibit "A" is as follows:

"POSITION NO. 57: M. I. T. Clerk—RATE \$6.24. Rate, route and extend bills of lading covering M. I. T. shipments.

POSITION NO. 70: M. I. T. CLERK—RATE \$6.24. Bill M. I. T. shipments, post tonnage applications, issue corrections on overdraft tonnage rate, route and bill miscel-

laneous carload freight, generally assist the occupant of Position #57.

POSITION NO. 58: BILL CLERK—RATE \$5.96. Bill L. C. L. and carload shipments other than M. I. T."

Effective January 24, 1932, Position Number 58 was abolished and part of the work was absorbed by Position No. 70. On July 1, 1936 a Position Number 58 was established under the title of Bill-Utility Clerk, rate \$5.27 per day; duties: billing M. I. T. freight, registering M. I. T. tonnage, and such other duties as may be assigned.

The Employes' position is as follows:

"It is the contention of employes that: (a) the duties which presently constitute the substance of Position No. 70 and were the controlling factors in establishing the rate of pay are those which, prior to January 24, 1932 made up Position No. 58; (b) the duties which presently constitute the substance of Position No. 58 and were the controlling factors in establishing the rate of pay, are those which, prior to January 24, 1932, made up position No. 70; (c) rates have been transferred from one position to another in violation of the Clerks' Agreement rules; (d) the employe assigned to Position No. 58 has been assigned to higher rated duties in violation of the Clerks' Agreement rules; (e) an established position was abolished in 1932 and recreated in 1936 under a different title for the purpose of reducing the rate of pay and evading the application of the Clerks' Agreement rules.

"Summarizing we find that as of January 24, 1932 we had Positions 57, 70, 58 rated at \$6.24, \$6.24, \$5.96 respectively, total \$18.44 per day to which were assigned substantially the same kind, class and volume of work presently assigned to Positions 57, 70, 58 rated at \$6.24, \$6.24, \$5.27 respectively, total \$17.75 per day. Duties now assigned to Position No. 70, rate \$6.24, are those originally assigned to Position No. 58, rate \$5.96. Duties now assigned to Position No. 58, rate \$5.27 are those originally assigned to Position No. 70, rate \$6.24."

It is the Carrier's contention that this is a new job, and therefore is properly rated.

The Board recognized the principle in Award No. 751, but is of the opinion that the weight of the evidence in this case does not sustain the Employes' position, but is a new position and comes within the principles announced in Award No. 1143.

While there is a sharp conflict in the evidence, yet after considering the evidence as a whole, the Board is of the opinion the evidence does not sustain the Employes' position. The Board will not lengthen this opinion to state how it weighed the evidence, as it recognizes it is largely a matter of judgment, yet when it is considered that four years elapsed between the time the position was abolished and a new one established, coupled with the comparison of the duties of these three positions as shown by Exhibit "A," and the bulletin in reference to positions 58 and 70, and the fact that there is a sharp conflict between the witnesses, the Board concludes that the claim must be denied.

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 employe involved in this dispute are respectively carrier and employe 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 claim is denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 17th day of December, 1940.