

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

George E. Bushnell, 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 Mr. J. F. Parker, Assistant Stationmaster, Central Passenger Station, Los Angeles, California, be compensated at rate of \$7.09 per day, effective January 19, 1938, and for each day thereafter on which required to work as Assistant Stationmaster from 7:00 A. M. to 10:00 A. M., and as Gateman-Baggagehandler from 10:00 A. M. to 3:30 P. M."

EMPLOYEES' STATEMENT OF FACTS: "Prior to January 19, 1938, there existed at Central Passenger Station, Los Angeles, California, among others, the following two positions:

Position	Hours of Assignment	Rate of Pay
Assistant Stationmaster	5:45 A. M. to 2:45 P. M.	\$7.09 per day
Gateman-Baggagehandler	7:00 A. M. to 3:30 P. M.	5.50 " "

"Effective January 19, 1938, these two positions were abolished, and in lieu thereof, a position titled 'Assistant Stationmaster-Gateman-Baggagehandler' was established, the hours of assignment with respect to alleged division of duties being by the Carrier segregated as follows:

As Assistant Stationmaster— 7:00 A. M. to 10:00 A. M.
As Gateman-Baggagehandler —10:00 A. M. to 3:30 P. M.

"Mr. Parker was, on January 19, 1938, assigned to this newly created position of Assistant Stationmaster-Gateman-Baggagehandler, and for services performed from that date to or about May 7, 1939, (the date on which Central Passenger Station was discontinued and Los Angeles Union Passenger Terminal commenced operations) was compensated for actual time worked on basis of \$7.09 per day, from 7:00 A. M. to 10:00 A. M., and on basis of \$5.50 per day, from 10:00 A. M. to 3:30 P. M."

POSITION OF EMPLOYEES: "As a result of Arbitration Award in 1927, and which became effective as of January 1, 1927, there was established for all positions then in existence on Southern Pacific (Pacific Lines) and coming within the scope of Clerks' Agreement with the Carrier, certain rates of pay, which rates of pay were and are part and parcel of our Agreement with the Carrier, and subject to change only by agreement between the employees and the Carrier, brought about through orderly and prescribed procedure under the provisions of the Railway Labor Act and our working Agreement with the Carrier.

regularly assigned permanent position, such position calling regularly for 3 hours' service as Assistant Stationmaster between the hours of 7:00 A. M. and 10:00 A. M. and for 5 hours' service as a Gatemen-Baggage-man from 10:00 A. M. to 3:30 P. M. Rule 7 cited by Petitioner does not support claim in any particular.

CONCLUSION

"In the absence of any rule in the Agreement which would sustain the alleged claim, which is entirely without merit, and the employe in whose behalf the claim is submitted having been properly compensated for services performed, the Carrier requests the claim of the Petitioner be denied."

OPINION OF BOARD: Effective January 19, 1938, the two full time positions of Assistant Stationmaster and Gateman-Baggage-man, were abolished at the Central Passenger Station, Los Angeles, California. A new position of Assistant Stationmaster-Gateman-Baggage-man was created. This new position was bulletined and it was filled by Mr. J. F. Parker.

The record shows that the two old positions were abolished and the new position was created because the carrier's work had fallen off at the station to the extent that the two old positions were no longer required. The circumstances do not show that this was done "for the purpose of reducing the rate of pay or evading the application of these rules," as prohibited by Rule 6.

In the new position Mr. Parker performed the duties of an Assistant Stationmaster from 7:00 A. M. to 10:00 A. M. and those of a Gateman-Baggage-man from 10:00 A. M. to 3:30 P. M. Under the agreement of February 1, 1922, as revised to January 1, 1924, the rates of pay then in force in the seniority district were \$7.09 per day for the former and \$5.50 per day for the latter work. Mr. Parker was paid for the work performed at these rates. The rate of pay so determined for the new position was a fair and reasonable application of the standard prescribed in Rule 5.

The Clerks' agreement did not prohibit the carrier from abolishing the old positions where the work had been reduced to the extent that both positions were no longer required. Nor did the agreement prohibit the creation of the new position so long as Rule 6 was not violated.

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 evidence in this record does not show any violation of the agreement or any circumstances supporting the claim.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 31st day of July, 1941.