

Award No. 1634
Docket No. CL-1585

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Richard F. Mitchell, Referee

PARTIES TO DISPUTE:

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

ILLINOIS CENTRAL RAILROAD COMPANY

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that proper rates shall be applied to the yard clerical forces (approximately 20 clerks) now working in what is known as Stuyvesant Docks Yards in New Orleans, La., and that wage losses suffered, due to improper rates having been paid, be allowed retroactive to July 5, 1937, the date claim was first filed."

EMPLOYES' STATEMENT OF FACTS: "Prior to 1932 separate yards were maintained on the New Orleans Terminal, each of which had a distinct difference in the character of business handled and each of which had a different rate structure, based upon the character of the work required.

"Harahan Yard was the main yard on the New Orleans Terminal. It was the yard in which inbound and outbound trains handling all classes of commodities and merchandise arrived and departed. Trains were broken up, switched and made up in this yard and the yard clerical work covered all phases of car handling. The clerks in this yard had to be familiar with instructions covering advance and standing orders for cars; have a knowledge of industrial team track and warehouse instructions; make up car service reports, handle reconsignments and records on same; make up yard operation reports; weigh inbound and outbound carloads; check yard and shop tracks; make icing inspections; check icing records; make up interchange records; prepare home routes on foreign cars, make up train sheets; handle dispatch orders; assign tracks to inbound trains, etc.

"The rates for the various classes of yard clerk positions in the Harahan Yards in accordance with our wage agreement are:—(all rates are based on the 1940 Wage Scale)

One (1) Chief Clerk	—\$6.05
Two (2) Chief Clerks	— 5.85
One (1) Yard Clerk	— 5.85
One (1) Yard Clerk	— 5.44
Eighteen (18) Yard Clerks	— 5.23
One (1) Caller	— 4.18

"Harahan Yard Forces consisted of the following named clerks and rates of pay, prior to abolishment of yard:—

"The carrier contends that no rules of the agreement have been violated and that none can be shown as having been violated. The carrier contends further that the claim is outlawed due to not having been filed and handled prior to the effective date of the Railway Labor Act, and, due to the lax handling given the claim by the employes' representative. The carrier also contends, without waiving above objections, that the facts of record, which have been made a part of this submission, fully support it in the position taken, and that there is no cause for complaint or claim. It is the carrier's further position, therefore, that the claim be denied in its entirety without qualification."

OPINION OF BOARD: This dispute involves the question of a differential in rates of pay to yard clerical forces, Harahan Yard and Stuyvesant Docks Yard, New Orleans, La., on the Illinois Central Railroad. At New Orleans, the southern terminus of the Railroad, the Carrier established several yards, scattered over the entire territory.

Harahan Yard was constructed in 1900 and placed in operation July, 1901. At that time the rates of pay for the yard clerical forces were the same as paid the yard clerical forces at Stuyvesant Yard. It is the contention of the Carrier that it had trouble securing clerical help at Harahan Yard due to the location of this yard, which was some 10 or 12 miles from the city; that the yard clerks consumed approximately 14½ hours' time each day in going to work, working the regular shift, and returning to the city. As a result of this condition the Carrier in February 1906 increased the rate of pay of the yard clerks at Harahan Yard \$5.00 per month while the rate for employes at Stuyvesant Yard remained the same. This differential rate has continued at Harahan Yard until the present.

The Organization contends that the differential at Harahan Yard existed due to the nature of the work performed at that point. We do not think, however, that the reason for establishing the difference in the rate of pay at these two Yards is material as we will point out later.

In 1931 there was a tremendous slump in business throughout the nation which resulted in a marked decrease in trains operated in and out of New Orleans. Yard operations were changed, and some of the trains formerly run into Harahan Yard were run into Stuyvesant Yard. Due to this slump in business forces were decreased at Harahan Yard and increased at Stuyvesant, 14 clerical positions being abolished at Harahan on December 6, 1931, and the yard clerical forces at Stuyvesant being increased three positions on December 7, 1931. The rate of pay for the three positions that were added at Stuyvesant Yard was the same as that of the clerical help at that Yard.

On January 10, 1932, rate of one chief yard clerk at Stuyvesant Yard was increased from \$4.62 to \$5.04 per day and on the same date one position of chief yard clerk at \$5.04 per day was established. On March 10, 1932, on account of further decrease in business three additional yard clerk positions were abolished at Harahan; on July 1, 1932 two additional yard clerk positions were abolished, and on August 16, 1932, the remaining regularly assigned positions were abolished.

The force at Stuyvesant Yard at the time this case was submitted to the Board consisted of seventeen clerks, three less than the twenty mentioned in the claim, and only six more than the number of clerks that were employed at Stuyvesant Yard on December 6, 1931, the day before the yard operation was changed.

It is first contended by the Carrier that this dispute cannot be considered as one pending and unadjusted at the time of the passage of the Railway Labor Act as Amended June 21, 1934 and that therefore this Board has no right to consider it. The claim was first filed with the Carrier on July 5, 1937. The original claim gave date of claim or cause of complaint as about

July 1, 1932. It was appealed to the terminal superintendent on August 1, 1937, to the general superintendent on October 9, 1937, and to the manager of personnel on November 8, 1937. It was declined by the Carrier on June 27, 1938. On August 1, 1940, two years after payment was declined by Carrier, the claim in revised form was handed to the manager of personnel with the request that the Carrier join in submitting the claim to the Board which request was denied September 10, 1940. It should be noted that in the revised form a change was made in that payment was only asked back to the date of July 5, 1937, which was the date the claim was first filed. Thus we find that the claim has been continuing over a period of better than 10 years. To say the least, it has not been prosecuted as vigorously as it should have been. However, we do not find it necessary to pass on the question of whether or not the claim was pending and unadjusted at the passage of the Railway Labor Act, as amended June 21, 1934.

It is the Organization's contention that the Carrier violated the current agreement by discontinuing clerical work and positions at Harahan Yard and arbitrarily transferring such positions to Stuyvesant Yard and requiring employees to perform the work at lower rates of pay. With this we cannot agree. The record does not show that the work at Stuyvesant Yard at present is any different from what it was prior to the close of Harahan Yard. It is true there is a larger volume of work now performed but this has been taken care of by the establishment of additional yard clerical positions at the agreed upon rates of pay for this class of employees at Stuyvesant Yard, the point at which the work is performed. The chief yard clerks' rates have been adjusted upward when their forces were increased, and the clerks have acquiesced in these rates for many years.

This record does not show that the Carrier abolished the positions at Harahan Yard for the purpose of reducing yard clerical rates of pay but rather shows that the positions were abolished on account of change in yard operations which was brought about by diminishing business.

The difference in rate of pay at the Harahan Yard and the Stuyvesant Yard was recognized by the Clerks' Organization and was agreed upon by the Organization and the Carrier when they entered into their agreement on March 26, 1924. In that agreement the rates of pay covering the employees at Harahan Yard was higher than that paid at Stuyvesant Yard. There is no dispute in regard to this. By negotiation, the rates of pay in the 1924 agreement were increased 5 per cent on September 1, 1927 and the differential in rate of pay at Harahan and Stuyvesant was continued. By further negotiations and mediation a further increase of 5 cents per hour was applied to the rates in effect July 31, 1937, continuing the differential rate of pay in the Harahan Yard and the Stuyvesant Yard.

Thus we find that over the period of time set out in this claim there was a differential in the rate of pay in Harahan Yard and Stuyvesant Yard. Negotiations were had and agreements entered into between the Clerks' Organization and the Carrier and in these negotiations and in these agreements there was recognized the difference in pay between the two yards. In view of the facts as set out in this record we find no violation of the agreement on the part of the Carrier.

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 there was no violation of the agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 5th day of December, 1941.