

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

John W. Yeager, Referee

PARTIES TO DISPUTE:

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

THE TEXAS MEXICAN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(a) Effective January 1, 1941 the correct rates of pay for the positions of Cashier at Hebbronville, San Diego and Benavides, Texas, is \$150.00 per month. Also

(b) Claim that all employees involved in or affected by the Carrier's failure and refusal to apply the correct rates of pay be compensated for all losses sustained.

EMPLOYEES' STATEMENT OF FACTS: On January 1, 1941 Cashier positions were established at Hebbronville, San Diego and Benavides, Texas. The positions were bulletined with a rate of \$125.00 per month.

In addition to the three positions involved in this claim, we have five other stations where Cashiers are employed and are paid the rates shown below:

Station	Rate of Pay
Laredo	\$200.00 per month
Corpus Christi	175.00 " "
Alice	175.00 " "
Robstown	150.00 " "
Mirando City	150.00 " "

On January 1, 1941, when the three positions involved in this claim were created, the minimum rate paid a Cashier was \$150.00 per month.

POSITION OF EMPLOYEES: The employees quote the following rules in support of this claim:

Rule 50. New Positions

"The salaries for new positions will be in conformity with the salaries of analogous positions in comparable localities."

Rule 49. Preservation of Rates

"Employees temporarily or permanently assigned to higher rated position, or to the performance of a higher rated class of work, shall receive the higher rates; employees temporarily assigned to lower rated positions, or a lower class of work, shall not have their rates reduced."

Rule 50 which we have quoted above was written into the agreement to take care of situations where there is no established and agreed upon rate of pay. At the three stations involved in this dispute there was not, prior to January 1, 1941, a position of Cashier, therefore there was not an estab-

the full time each day. For instance, the Agent at Hebbronville receives a monthly salary from the Carrier of \$155.00, the Agent at San Diego receives a monthly salary from the Carrier of \$170.00 and the Agent at Benavides receives a monthly salary from the Carrier of \$140.00. At each of these three stations is a telegraph operator who performs a small amount of time each day in handling the telegraph keys. The rest of the time is spend doing other work around the station. The Telegraph Operator at Hebbronville receives \$125.00 monthly, the Telegraph Operator at San Diego receives \$100.00 a month, and the Telegraph Operator at Benavides receives \$100.00 a month. Thus, the Cashier-Clerk at each of these three stations in all fairness is not entitled to any more pay than \$125.00 monthly. To pay the Cashier-Clerk the amount desired by the Brotherhood would mean that the Clerk would be receiving more salary each month than the Agent at Benavides, and also would be receiving more than all three Telegraphers who can and do perform station clerical work. The jobs of Agent and Telegrapher at each of the three mentioned stations are old and well established positions, and for the Carrier to put in a new position and pay a salary of \$150.00 monthly would make the rate of pay for positions at each of these three stations entirely out of line, unjust and unreasonable. The Carrier wants to be fair to all of its employees, and wants to pay them salaries in accordance with the work done in other positions and in comparable localities. The Cashier-Clerk does not do a bit more technical work than either the Agent or the Telegrapher. In fact, it does not do as much work as either of said two positions. Consequently, a salary of \$125.00 is fair, reasonable and in accordance with the Clerks' agreement.

OPINION OF BOARD: The parties agree that the determination of the claim here depends upon an interpretation and application of Rule 50 of the Clerks' Agreement to the factual situation presented. The rule is as follows:

"The salaries for new positions will be in conformity with the salaries of analogous positions in comparable localities."

It is agreed that effective January 1, 1941, new positions of Cashier were created at Hebbronville, San Diego and Benavides, Texas, and that the rate of salary fixed by the Carrier for each of the positions was \$125.00 per month.

It is clear that the Carrier has no cashiers at any other points who are paid at a rate less than \$150.00 per month.

The claimant urges that the rate of pay for Cashiers at these three points should be at the rate of \$150.00 per month for the reason that these positions are analogous to positions in localities comparable to them. As examples, Robstown and Mirando City, where the rate is \$150.00 per month, are cited in the claimant's ex parte submission. This is as far as the details went upon which claimant rested the claim of an analogy until Employees' Rebuttal Brief was filed, which was on February 12, 1942, the date of the hearing. Attached to the brief, without comment, is a comparative statement of the business at these three points with those of Robstown and Mirando City. It is as follows:

	Robstown	Mirando City	Hebbronville	San Diego	Benavides
Jan. 1941	\$ 3765.95	\$1181.72	\$ 4832.63	\$ 4310.00	\$ 2739.00
July 1941	4424.81	812.22	10267.47	8000.38	7063.37
Nov. 1941	5512.33	627.00	7945.00	3576.00	4278.00
TOTAL	\$13703.09	\$2620.94	\$23045.10	\$15886.38	\$14070.37

The Carrier contends substantially (1) that no higher rate of pay is justifiable for the amount of work to be performed, (2) that the rate of pay conforms to salaries of analogous positions (not cashiers) in comparable localities, (3) that there is no analogous position of cashier in any comparable locality, and (4) that the facts presented here are insufficient upon which to base an award.

As to the first proposition, the rule in question does not permit consideration of this independent of other considerations.

As to the second, obviously neither the Employes nor the Carrier, when the agreement was entered into, contemplated by Rule 50 reference to and a comparison with positions not covered by, or created agreeable to, the agreement itself. That this interpretation leaves a possible gap not covered by rule where there may not be found analogous position or comparable locality must be considered as an unfortunate lack of foresight.

The third and fourth propositions must be dealt with together. The claimants insist that these three localities are comparable with Robstown and Mirando City. This claim was specifically presented and became the determinable issue in the submission which was received by this Division on December 5, 1941. The Carrier was informed of the point in issue, hence we must assume that it knew what it was called upon to meet.

On the issue presented the claimant has discussed generally the duties and responsibilities of cashiers and has presented tangibly a limited comparative analysis of the business done at Robstown and Mirando City. On this basis alone, and in the absence of counter showing, it would appear that the positions of cashier at Robstown and Mirando City are analogous positions in localities comparable with Hebbbronville, San Diego and Benavides.

On the other hand the Carrier has discussed generally the duties of the cashiers in question and again has generally made a comparison of their duties with other classes of employes doing in part, similar work, but it fails to give tangibly any information either of a comparative nature as applied to the named localities or specifically and individually so as to permit a comparison here. It having known the issue, it is but reasonable for us to assume that the Carrier chose not to furnish any tangible information on this vital point. It follows therefore that this claim should not be referred back on account of lack of information unless the showing of the claimant fails to support the claim.

It is the opinion of the Board that the showing of the claimant fairly analyzed is sufficient, though not as exhaustive as might have been desired, to warrant a finding that Rule 50 has been violated and that the positions of Cashier at Hebbbronville, San Diego and Benavides, Texas, should carry a salary rate of \$150.00 per month and that the effective date of the award should be January 1, 1941.

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 claims are sustained with the effective date of the rating January 1, 1941.

AWARD

Claims sustained as per Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 1st day of May, 1942.