

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

John W. Yeager, Referee

PARTIES TO DISPUTE:

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

THE ERIE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, that the carrier has violated and continues to violate the Clerks' Agreement dated September 1, 1936, when it assigns or requires employes at Chicago, Ill., classified as truckers, rate 52¢ per hour, to perform duties and responsibilities of Delivery Clerk, rate 71¼¢ per hour, for four or more hours per day, and fails and refuses to pay such employes a minimum of eight hours per day at the Deliveryman's rate of pay, and

That employes Mathis, Doran and others engaged in the handling of freight on the Chicago platform who had been worked and paid under such conditions, shall now be paid a minimum of eight hours at the Delivery Clerk's rate of pay for each day so worked retroactive to September 1, 1936, less compensation already received.

EMPLOYEES' STATEMENT OF FACTS: In the operation of the platform of this carrier at Chicago, Ill., regularly assigned positions are established and set up in accordance with the formula provided in Rule 25 of the Clerks' Agreement. In addition to the regular assigned force there are a number of positions that work regularly each day, but because of the use of the formula they are considered as additional or extra positions. As the volume of business fluctuates the number of regularly assigned and extra positions also fluctuates. Additional men or extra men report regularly each day at a specified time and place for available work, and when additional Checkers or Delivery Clerks positions are put on the senior regularly assigned truckers are assigned to such higher rated positions and their positions are then filled from the extra or additional force.

It is and has been the practice to permit employes Mathis, Doran and others classified as truckers to start their assignment as truckers and shortly thereafter they are assigned to perform work as sorters, and later on in the day as delivery clerks. These men average between six (6) and seven (7) hours each day worked as Delivery Clerks and are paid for actual time worked as truckers at the truckers, rate of pay and actual time worked as Delivery Clerks at Delivery Clerk's rate of pay.

The organization made request on the carrier that the employes so worked be compensated eight (8) hours per day at the rate of position occupied (Delivery Clerk's position) on each day so used, which request and claim has been denied by the carrier.

and later alleged violation of Rule 36 in addition to Rule 2 and, for ready reference, Rule 36 reads as follows:

"Rule 36. Employees temporarily or permanently assigned to higher rated positions shall receive the higher rates while occupying such positions; employees temporarily assigned to lower rated positions shall not have their rates reduced.

"A 'temporary assignment' contemplates the fulfillment of the duties and responsibilities of the position during the time occupied, whether the regular occupant of the position is absent or whether the temporary assignment does the work irrespective of the presence of the regular employee.

"Assisting a higher rated employee due to a temporary increase in the volume of work does not constitute a temporary assignment."

Delivery Clerks are not included as clerks on clerical rosters of this Railroad but rather are included as part of the freight house platform forces and accordingly appear on Roster "B". For reference, your attention is directed to Rule 4, Page 16 of Rules and Regulations effective September 1, 1936, wherein it stipulates:

"Roster 'A' to include clerks (except as indicated for Roster 'B' and under District Stores Department Rosters), baggage agents, icing inspectors, train and engine crew callers, telephone switchboard operators, waybill or ticket assorters, messengers, office boys, and others similarly employed.

"Roster 'B' to include freight house foremen, assistant freight house foremen, receiving clerks, delivery clerks, checkers, flag clerks, ballot collectors, and Group 2 employees, except Stores Department."

At the 14th Street Freight House, when truckers are ordered to work part time as truckers and part time assisting delivery clerks such employees have been compensated for the actual hours worked at the rate for each classification. There has been no change in this customary procedure for compensating these employees since the Rules and Regulations effective September 1, 1936 were negotiated and it was being done at the time and has been continued.

We hold that this claim is unjustified, not supported by the Rules and, accordingly, should be denied by the Third Division for the following reasons:

1. There is no violation of Rule 2 or Rule 36 demonstrated by the Employees.
2. Rule 2, which is first cited by the organization to support claim, does not establish a basis for compensation.
3. Delivery Clerks are regularly assigned at Chicago, but, because of peak business, daily, for fluctuating periods, other employees are ordered temporarily to assist these delivery clerks and it is during this temporary period that the employees thus used are paid the higher rate of pay for the actual hours so used.
4. There is no composite service rule in the Rules and Regulations September 1, 1936 which requires that the highest rate be paid when two or more classes of service are performed during a working period.

OPINION OF BOARD: This is a claim of the System Committee that the carrier has violated and continues to violate the existing Clerks' Agreement by, at Chicago, Illinois, assigning and requiring employees rated as truckers with hourly rate of pay of 52 cents per hour to perform duties of Delivery Clerk having a rate of 71¼ cents per hour for four hours or

more per day without payment of the Delivery Clerk rate for the full eight hour day, and in the Ex Parte submission the committee urges that certain employes perform regularly four or more hours as Delivery Clerk, therefore such positions are entitled to be so classified and that the employes are entitled to receive the higher rate of pay.

This claim is controlled by the same principles as were controlling in Docket CL-1832, Award 1844, and also as there the determination must depend upon the factual presentation, therefore for controlling principles we refer to that award.

Here, as there, the factual presentation is insufficient to justify a finding on either phase of the claims in favor of claimant.

This Referee is however, in the light of the announced general rules in Docket CL-1832, Award 1844, for interpretations of the Agreement, and the less general pronouncement for ratings to higher established old positions and establishment of new positions, of the opinion that a joint check on the property should not have been refused by the carrier.

By reason of lack of sufficient factual information to make a determination the claim should be referred back for a joint check on the property to develop the facts sufficiently for ascertainment of whether or not the Agreement has been violated as claimed.

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 factual information is insufficient upon which to base a determination.

AWARD

The claim is referred back for joint check on the property for the purpose of ascertaining factually whether or not the carrier has violated the Agreement as claimed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 18th day of June, 1942.