

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Michael L. Fansler, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES
GULF COAST LINES, INTERNATIONAL-GREAT NORTHERN
RAILROAD COMPANY, SAN ANTONIO, UVALDE & GULF
RAILROAD COMPANY, SUGARLAND RAILWAY COMPANY,
ASHERTON & GULF RAILWAY COMPANY**

(Guy A. Thompson, Trustee)

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

(a) The carrier is violating the Clerks' Agreement by refusing to bulletin positions account changes in rates of pay that were made on June 1, 1941. Also

(b) Claim that all employees involved in or affected by the carrier's failure and refusal to bulletin the positions be compensated for all losses sustained.

EMPLOYEES' STATEMENT OF FACTS: In November 1940, the employees filed claim with the carrier involving the annual assignment and rate of pay of a number of positions.

Effective June 1, 1941, the carrier reduced the annual assignments and increased the rates of pay on 70 positions, but refused to bulletin the positions with the increased rates, as required by Rule 24 of the current agreement.

POSITION OF EMPLOYEES: The history surrounding the carrier's action in changing the annual assignments and rates of pay was presented to your Honorable Board in Docket CL-1748, Award No. 1627, and need not again be repeated in this claim. The positions here involved are those listed in Exhibit A, Docket CL-1748.

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

Rule 24.

"Except when changes in rates result from negotiations for adjustments of a general character, the changing of a rate of a specified position for a particular reason shall constitute a new position."

Rule 9.

"(a) All new positions and vacancies will be bulletined within three (3) days after being created or becoming vacant. The bulletin will be posted on bulletin boards in each office and will show location,

Rule 24 reads as follows:

"Except when changes in rates result from negotiations for adjustments of a general character, the changing of a rate of a specified position for a particular reason shall constitute a new position."

The intention of the above rule was to require the Carrier to bulletin a position the rate of which was arbitrarily increased for some specific reason so that other employees senior to the employee assigned to the position at the time the increase in rate of pay became effective, would have the opportunity to express their desire to be assigned to the position. The changes made in the assignment of the employees covered by Carrier's Exhibit No. 1 were the result of negotiated letter of understanding with the Organization which had the effect of changing the daily rates of pay, but did not have the effect of changing the annual compensation to the employees involved. Rule 24 is not applicable to the instant case, inasmuch as it deals with a specified position and not with a number of positions the changes in the daily rates of which become effective by reason of negotiations with the representatives of the Employees.

Section (a) of Rule 9 reads as follows:

"All new positions and vacancies will be bulletined within three (3) days after being created or becoming vacant. The bulletin will be posted on bulletin boards in each office and will show location, title, and description of the duties, assigned hours, days, meal period and rate of pay."

All positions covered by the instant case are not new positions but are the same positions whose daily rates were increased as indicated above by reason of the negotiations with representatives of the Employees, and therefore are not subject to being bulletined under Rule 9 (a) quoted above.

It is the contention of the Carrier that the evidence herein submitted proves conclusively that the Carrier is not required under the rules of the agreement to bulletin positions listed in its Exhibit No. 1, and your Honorable Board is respectfully petitioned to so rule.

OPINION OF BOARD: Rule 24 provides:—

"Except when changes in rates result from negotiations for adjustments of a general character, the changing of a rate of a specified position for a particular reason shall constitute a new position."

Or to state the rule in equivalent language:—

"The changing of a rate of a specified position for a particular reason shall **not** constitute a new position when changes in rates result from negotiations for adjustments of a general character."

In October, 1940 as a result of negotiations, the following agreement affecting adjustment in rates was entered into:—

"It is agreed that all 365 day assignments, not necessary to the continuous operation of the carrier, will be reduced to 306 day assignments and the daily rate will be adjusted so that the earnings will be the same as received for 365 days."

It only remained necessary to ascertain the facts to determine the positions affected. When they were ascertained, their rates were changed because of and as a result of this agreement.

No specific position is referred to in the agreement and the rate change does not specify positions. It merely lays down a general rule or principle affecting all positions present and future within its scope.

The adjustments must be considered of a "general character" since the rule creates a class of employes and sets them apart for different rating. If it referred to "Specific Positions" it would not affect new positions which might be created. But it does not. It is general in character and effect and was clearly so intended. In the Opinion in Award No. 1614 (Docket No. CL-1679) it is clearly recognized that the agreement created a "classification" of positions.

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

The carrier has not violated the agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 8th day of October, 1942.