

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Fred L. Fox, Referee

PARTIES TO DISPUTE:

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

THE WESTERN PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of System Committee of the Brotherhood of Railway Clerks that September 4, 1941 is the proper effective date for re-rating of position now designated as Head Bill Clerk at Oakland Freight Station and that Hubert Daverkosen shall be paid the difference between what he has earned and what he would have earned had the position been re-rated effective September 4, 1941.

EMPLOYEES' STATEMENT OF FACTS: Prior to September 4, 1941, Hubert Daverkosen was assigned to the position of Rate Clerk at Oakland at the rate of \$7.02 per day, (\$7.10 since December 1, 1941.) Under date of September 4, 1941 Daverkosen addressed a letter to Agent R. G. Harmon, requesting that his position be re-classified to that of Head Import Clerk at \$8.19 per day (\$8.27 since December 1, 1941,) comparing his position with a position of this title at San Francisco station.

On June 23rd and 24th, 1942 a joint check was made for the purpose of making comparison between the position of Rate Clerk Oakland, and the position of Head Import Clerk at San Francisco. The results of the joint check are shown as Employees' Exhibit "A."

This claim was handled through the usual channels up to and including Vice President and General Manager E. W. Mason. At the time this claim was being handled with Mr. Mason's office it was mutually agreed, in a separate action, between the Carrier and this Brotherhood to increase rates of pay on certain clerical positions at Oakland Freight Office. In keeping with new rates established for these certain positions it was agreed that the position formerly designated as Rate Clerk at \$7.10 per day would be re-classified to Head Bill Clerk at a rate of \$7.80 per day. However, no commitment was made by Carrier nor employees that this action would dispose of claim of Daverkosen with respect to effective date. This feature was left open for future conferences.

In further conferences the Carrier and the Brotherhood have been unable to agree upon an effective date for disposition of Daverkosen's claim.

POSITION OF EMPLOYEES: The following rules are cited from the agreement between the parties bearing an effective date of October 1, 1930:

Rule 9: The wages for new positions shall be in conformity with the wages for positions of similar kind or class in the seniority district where created.

In any event, Carrier contends that readjustment should not be compelled at the demand of individual employes and without advance notice by the organization.

OPINION OF BOARD: Effective January 1, 1927, a rate of \$5.90 per day was established for the position of Rate Clerk, in the office of the Local Freight Agent, at Oakland, California. The rate was subsequently increased to \$6.30, later to \$7.02, the rate effective September 1, 1941; and still later to \$7.10; the last increase effective December 1, 1941, subsequent to the date when the employe claimant first made request for a different classification and increased pay.

One Hubert Daverkosen occupied the position of Rate Clerk at Oakland, on September 4, 1941, and on that date requested the Local Freight Agent to classify him as Head Import Clerk, a position then in existence, and held by another employe, the rate of pay for which was then \$7.47 per day, subsequently raised to \$8.27 per day, effective December 1, 1941. The request was taken up with the Carrier's Superintendent and declined.

On November 26, 1941, the Clerks' Brotherhood presented a claim, based on Daverkosen's request, and this claim was subsequently handled in one or more conferences between the General Chairman of the Brotherhood and a Carrier Representative, and on May 27, 1942, it was agreed that a joint check of the work in question be made. At the same time, the Carrier was engaged in a general revision of all positions in the Oakland Freight Agency, made necessary by increasing business due to the war emergency. The joint check was made on June 23-24, 1942, and, according to Carrier's claim, "As a result of the joint check and general study, it was determined that the duties performed by and the responsibilities then required of the Rate Clerk warranted reclassifying the position to that of Head Bill Clerk at \$7.80 per day and this was done effective July 1, 1942."

It seems to be agreed that, by the foregoing action of the Carrier, a new position was created. There is no objection to the classification then made, nor to the rate of pay. The sole question in dispute is as to the date when the new arrangement should have been made effective, that question, admittedly, not being settled at the time the reclassification was made and agreed to.

The contention of the Carrier is that what was done in May and June, 1942, amounted to an abandonment by the Brotherhood of the claim it filed on November 26, 1941. This is disputed by the Brotherhood, and its position is that what was done in June, 1942, was merely one method of disposing of the claim first made by the employe on September 4, 1941, and subsequently presented by the Brotherhood, in a formal way, on November 26, 1941; and, therefore, the reclassification made and the adjustment of the controversy should relate to September 4, 1941.

When this contention was advanced, the Carrier first offered to make the adjustment effective as of January 1, 1942, and later offered to make it retroactive to November 26, 1941, the date when the Brotherhood first entered the picture, on the theory, as it argues, that classification and rates of pay are matters of agreement between it and the Brotherhood, and that it should not be required to consider demands of individual employes. This position, it must be said, is in line with the consistent claim of the Brotherhood that individual agreements between individual employes and a Carrier cannot, and should not, be recognized, because to do so would be destructive of the principle of collective bargaining. The Carrier's offers, which must be treated as offers of compromise, were rejected, and this claim prosecuted.

The Carrier has reverted to its original position that making the reclassification effective as of July 1, 1942, was fair and equitable, and asks us to deny the claim in its entirety.

If the claim first presented by the employe on September 4, 1941, and later by the Brotherhood, on November 26, 1941, had been prosecuted to a successful conclusion, as appears to have been done in the case considered in Award No. 1518 of this Division, there could have been no question raised against its being made retroactive, certainly as far back as the date when the Brotherhood formally presented the claim, and we think to the date when the employe first made his request for reclassification.

There is much to support the position of the Carrier, that, inasmuch as the protection of employe rights is entrusted to the Brotherhood, under the Agreement, and the Carrier not being permitted to make agreements with individual employes, it should follow that only claims filed by the Brotherhood need be considered, because any settlement with an individual employe would properly be repudiated by the Brotherhood, on the grounds that such settlement violated the agreement, which, as is well known, is between the Carrier and the Brotherhood. However, it has been the uniform practice of this Division to permit claims filed by the Brotherhood, on behalf of employes, to relate to the date when the employe, individually, made the complaint, and the dispute first arose on the property, and we think that, in most instances, it would be unfair to the employe not to do so.

But the claim of the employe and the Brotherhood was not sustained. It is not necessary for us to say that it was abandoned at any time; but, unquestionably, the Carrier declined the claim, and then, after a joint check, and in line with a general revision of positions in its Freight Office, created a new position for the claimant employe, at a rate of pay apparently acceptable to the employe and to the Organization.

In these circumstances, can we say that a claim rejected by the Carrier shall be made the basis for making retroactive an adjustment reached through agreement? We think not. It may be true that the work Daverkosen did between September, 1941, and July, 1942, was the same required of him subsequent to the latter date, but of this we cannot be certain, because the war emergency intervened. It may be that, from an equitable standpoint, there is merit in the claim now presented, but that is a matter which the parties could and should have settled on the property, and at the time the adjustment was made as to position and rate of pay. We are here concerned with the situation as it is presented to us. The equitable considerations involved, and which the parties might well have considered on the property, are not such as would, in our opinion, justify us in holding that, as a matter of right, and under the rules which govern disputes brought to this Board, the agreement made in June, 1942, should take effect on any date prior to July 1, 1942, the date when the occupant of the newly created position of Head Bill Clerk entered upon his duties.

It may be said that by our decision we relieve the Carrier of a burden which, in part, it was willing to assume. This is true, but the Carrier's offer was one of compromise, and it is fundamental that a rejected offer of compromise is, after its rejection, no longer binding on the party who makes it; and, in law, evidence of such offer is not permitted to be introduced. When the Brotherhood rejected the offer of compromise, it did so at the risk of losing its entire claim, when presented to this Board. The Carrier may still be willing to make its offer good, but, in our opinion, it is not required to do so.

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 Carrier was not required to make effective the rate of pay attached to the new position of Head Bill Clerk, created by it, and effective July 1, 1942, at any time prior to said date.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois this 13th day of August, 1943.