

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Bruce Blake, Referee

PARTIES TO DISPUTE:

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

SOUTHERN PACIFIC COMPANY (PACIFIC LINES)

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

(a) The correct rate of pay for position No. 25-T, Bill Clerk, Richmond, California, is now \$6.45 per day.

(b) That Mr. A. F. Carico, occupant of the position, and/or his successors involved in or affected by the application of incorrect rate be compensated for all monetary loss sustained, retroactive to April 16, 1941.

EMPLOYEES' STATEMENT OF FACTS: An agreement bearing effective date of October 1, 1940, as to rules and working conditions is in effect between the parties to this dispute. The employee or employees involved in this claim are covered by that agreement.

On December 5, 1940, carrier established position of Bill Clerk, No. 25-T, at Richmond Freight Station, with rate of \$5.50 per day, present rate \$6.30 per day.

The duties of this position consist of making freight bills, billing carload and less than carload freight, both interline and local.

POSITION OF EMPLOYEES: Rule 5 of our current agreement with the carrier reads:

"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."

Our letter presenting the instant claim to the management is dated November 17, 1941, and reads:

"We present herewith an appeal from decision of Superintendent Goodfellow, Western Division, in claim of Mr. A. F. Carico, Bill Clerk 25T at Richmond, California, that he be compensated at rate of \$5.65 per day in lieu of \$5.50 per day, effective April 16, 1941, the date he assumed the assignment.

"Since his occupancy of this position, Mr. Carico has devoted his entire tour of duty to the performance of expensing and billing carload and L. C. L. shipments, interline and local.

from December 5, 1940 to April 16, 1941, likewise there was no change in the duties and responsibilities of said position during the period of time from April 4, 1935 when it was first established to January 17, 1938, when it was abolished. Therefore, for a period of more than three years the petitioner and the occupants of position No. 25, accepted, without any protest whatever, the fact that said position was properly rated. However, the petitioner now contends that since April 16, 1941, the date on which the claimant first occupied position No. 25, the carrier had an obligation by virtue of Rule 5 of the current agreement, to increase the rate of said position to conform with the higher rate of pay applicable to position No. 9.

Rule 5 is as follows:

"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." (Emphasis ours.)

The carrier submits that the above-quoted rule in no way supports the petitioner's contention; clearly it does not establish that there was any obligation on the part of the carrier to change the rate of pay for position No. 25 either on or after April 1, 1941. The duties of said position were the same on that date as they were during the periods April 4, 1935 to January 17, 1938 and December 5, 1940 to April 16, 1941; moreover, a new position not having been created on April 16, 1941, Rule 5 did not come into operation and was in no way applicable at that time.

On April 4, 1935 when bill clerk position No. 25 was created as a new position there was no position of similar kind or class existing at Richmond (or on the Western Division seniority district) to afford the carrier a basis for determining the rate of pay applicable to said new position; therefore, in consideration of the fact that the duties of the new position were merely of a routine clerical nature and therefore were not comparable to the duties and responsibilities of Night Bill Clerk, position No. 9—the carrier established a rate of \$5.10 per day as the proper rate for this position. As evidence that the carrier's action was proper, and that position No. 25 was properly rated, attention is again directed to the fact that the petitioner and the occupants of that position were not heard to complain during the period of more than three years during which said position existed prior to April 16, 1941.

It is significant of note that no exception was taken to the established rate for position No. 25 until subsequent to the time the claimant was assigned to that position; therefore, the carrier asserts, after due consideration is given the foregoing, that what the petitioner actually seeks in this docket is an award that would have the effect of rating the employee and not the position. Rule 4 of the current agreement specifically precludes such action. Said Rule is as follows:

"Positions (not employees) shall be rated and the transfer of rates from one position to another shall not be permitted."

CONCLUSION

The carrier asserts that it has conclusively established that the claim in this docket is without merit, and therefore respectfully submits that it should be denied.

OPINION OF BOARD: From the view we take of the record in this dispute there is only one question to be determined: are the duties and responsibilities attendant upon Position No. 25-T, Bill Clerk, substantially the same as those attendant upon Position No. 9, Night Bill Clerk? The question is to be resolved by weighing the facts, presented by the parties, as they appear in the record. To review the evidence, and the facts claimed to be established thereby, would amount to nothing but an argument in support of the conclusion we have reached. This we think is unnecessary. For it is, to us, clear

from the record that the duties and responsibilities imposed on the incumbent of Position No. 9 are substantially heavier than those imposed on the incumbent of Position No. 25-T—sufficiently so as to justify the differential in pay between the two positions. Consequently, there was no violation of Rule 5.

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 no violation of the agreement has been established.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 1st day of June, 1944.