

Award No. 2610
Docket No. CL-2733

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

PARTIES TO DISPUTE:

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

HOUSTON BELT AND TERMINAL RAILWAY COMPANY

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

(a) The correct rate of pay for the position of Delivery Clerk advertised in Bulletin 101, November 15, 1943, is \$201.05 per month (plus subsequent general wage increase), retroactive to the date the position was created. Also

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

JOINT STATEMENT OF FACTS: On November 15, 1943, Bulletin 101 was issued advertising position of Delivery Clerk with hours 7:30 A. M. to 4:30 P. M., and with a rate of \$171.85 per month reading:

"BULLETIN

Place — Houston, Texas
Date — 11/15/43
Bulletin — No. 101
Dept. — Local Freight

TO EMPLOYES CONCERNED:

The following position is hereby advertised for application or bids in accordance with Rule 9 of Clerks' Agreement. Applications or bids shall be submitted to the undersigned (and a copy sent to the Local Chairman) where they will be received up to 12:00 Noon 11/20/43.

Location	Houston, Texas
Title of Position	Delivery Clerk
Rate of Pay	\$171.85 per Mo.
Hours of Assignment	7:30 A. M. to 4:30 P. M.
Days of Assignment	6
Meal Period Assignment	1:00 P. M. to 2:00 P. M.
New Position or Vacancy	New Position
Vacated by	—
Permanent or Temporary	Permanent
Duration Temporary Period	—
Brief Description of Duties	Deliver freight, make passing reports, manifests and other clerical work.

R. M. Verlander
Agent

cc: Local Chairman
General Chairman
Division Chairman."

others similarly situated. It has been repeatedly held that this board has no authority to make rules. Its function is to interpret them and apply them to the facts of particular cases."

"Award 1813 (Sidney St. F. Thaxter, Referee)

"This rule means simply that a train dispatcher who has held that status with the company for a year or more prior to January 1st is entitled to his vacation with pay. It is not for this Board to read into the rule any qualification however equitable it may be. To do so would be to amend the rule, not to apply it."

"Award 2335 (Edward F. Carter, Referee)

"For this Division to require reparation payments to all clerks under such circumstances would compel its entrance into the field of contract making—a field entirely foreign to the purposes of the Board.

If claimant feels that injustice has resulted which required corrective measures, it must resort to negotiation to secure the remedy."

Only by extending the terms of the two letter agreements, which would in effect be adding a new rule, can the instant claim be sustained.

The only difference between the rate paid and the rate claimed is the increase of \$29.20, effective November 16, 1940, under the two letter agreements heretofore quoted and this is the substance of the dispute between the parties. As herein shown, the new position established by bulletin 101 November 15, 1943, was not entitled to the benefit of this \$29.20 increase.

The question at issue here has already been passed upon by the Board in Award 2272, Referee H. Nathan Swain, and the following is quoted from Opinion of Board, 7th and 8th paragraphs:

"The employees contend that the Memorandum Agreement effective November 16, 1940, worked prospectively both as to requiring assignment of only 306 days on all new positions not necessary to the continuous operation of the Carrier, and also as to making a rate fixed on such new positions on the basis of a 365-day assignment apply to a 306-day assignment.

"We cannot agree with this second contention of the employees as applied to the facts of this case. The Memorandum Agreement provided for the adjustment of the rate so that the earnings will be the same as received for 365 days. We think the Agreement referred to rates THEN being paid for 365-day assignments." (Emphasis supplied)

While the dispute covered by Award 2272 involved a question not present in the instant dispute (whether the assignment was necessary to continuous operation of the Carrier) the result of that award in its disposition of claim (b) was to deny what the employees are here contending for—briefly, 365 days pay for 306 days work.

In conclusion: the Carrier has shown that the only agreements that may be used in support of the instant claim do not apply to the position created under Bulletin 101 and requests that the claim be denied.

OPINION OF BOARD: By the Joint Statement of Facts the parties certify:

"Prior to creation of this position, there was only one position in this seniority district designated as Delivery Clerk. The negotiated and agreed upon rate of pay for that Delivery Clerk was \$201.05 per month.

The duties assigned to and performed by the position here in dispute are the same as those performed by the other Delivery Clerk. The positions work the same hours and have the same meal period."

and thus bring the claim within the purview of Rule 51—New Positions. That Rule is controlling in the disposition of the claim since the duties assigned to and performed on the position in question are the same as those of an existing position in the same seniority district.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties to this dispute waived hearing thereon;

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 Rule 51—New Positions, governs in disposition of the claim.

AWARD

Claim sustained in accordance with the Opinion and Findings effective date this position actually established.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 19th day of June, 1944.