

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, 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:

(a) That correct rate of pay for three positions classified as Mail Foremen at Sacramento Station Baggage and Mail Room is \$7.15 per day.

(b) That A. Bastianelli, Louis Borghesi, Lester E. Gully, and/or their successors, be compensated at rate of \$7.15 per day, less compensation already received, retroactive to December 1, 1941, and at the rate of \$7.07 per day, from November 4th through November 30, 1941. November 4, 1941, was date on which claim was filed.

In explanation of the different rates of pay in the period following initial filing of this claim, the Board will please understand there was granted by mediation an increase of nine cents per hour, effective September 1, 1941, and an additional one cent or total of ten cents per hour, effective December 1, 1941.

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

There are, at Sacramento Station Mail and Baggage room, three positions carrying payroll classification of Mail Foreman but who are compensated at established rate for Mail Handlers—First Grade, i. e., \$6.35 per day.

As result of Arbitration Award in 1927, which became effective as of January 1, 1927, there were established for all positions then in existence on Southern Pacific (Pacific Lines) and coming within scope of Clerks' Agreement with the carrier, classifications and rates of pay, which classifications and rates of pay were and are part and parcel of our agreement with the carrier, and subject to change only by agreement between the employees and the carrier, through orderly and prescribed procedure under the provisions of the Railway Labor Act and our working agreement with the carrier.

Following the Arbitration Award of 1927 as hereinbefore referred to, the classifications and rates of pay were, for ready reference, set up on forms designated and thereafter known as Form C-21 Final.

For the Board's ready reference, we show as Employees' Exhibit "A," a copy of Page 12, Form C-21 Final, Sacramento Division. The Board will

The carrier submits that the claim in this docket is merely a claim for an increased rate of pay on behalf of the claimants. The matter of increases in rates of pay is not properly referable to this Board and this Board is without jurisdiction or authority to grant or award increases in rates of pay.

CONCLUSION

The carrier asserts that it has conclusively established that the claim in this docket is without basis or merit and therefore respectfully submits that it is incumbent upon the Division to deny it.

OPINION OF BOARD: The claimants are three mail foremen at the Sacramento Station Baggage and Mail Room. They contend that they are entitled to pay at a daily rate of \$7.15. It appears that in 1927, the classification and rates of pay for mail handlers were set up on Form C-21 Final, appearing in the record. Under Form C-21 Final, mail handlers were classified as "Mail Handlers-First Grade" of which there were then three and "Mail Handlers-Second Grade" of which there were then thirteen. The rate of pay of a Mail Handler-First Grade, with subsequent wage increases added, is \$6.35 per day. There is no classification of Mail Foreman shown on Form C-21 Final. In 1928, the three Mail Handlers-First Grade were reclassified as Mail Foremen without an increase in the rate of pay. It is the contention of the employees' organization that they are entitled to a rate of pay commensurate with the duties and responsibilities attaching to the position.

It must be borne in mind that this Board cannot fix rates of pay, it can only interpret the agreement as made and apply the rates which the parties themselves have fixed. We must necessarily look to the current agreement in determining the rate of pay of a Mail Foreman in the Sacramento seniority district.

Assuming the correctness of the employees' contention that the position of Mail Foreman in the Sacramento Mail Room was a new position when the reclassification took place in 1928, section 5 of the current agreement becomes the controlling provision. It says: "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 applying this rule, the employees point to the fact that there was and is an identical classification of Mail Foreman at Oakland Pier platform, a point on an adjoining division, where the rate has been fixed at \$7.15 per day. But it will be observed that Rule 5 limits the wages for new positions to a rate in conformity with the wages of positions of similar kind and class **in the seniority district where created.** There are no positions of similar kind and class in the Sacramento seniority district. Therefore, there is no means provided under Rule 5 for a determination of a wage rate for a Mail Foreman in that seniority district.

The employees contend that under those conditions the carrier is obligated, if there is a classification of similar kind and class on the property, to apply the rate thereof to the same classification at Sacramento. The difficulty with this contention is that the contract creates no such obligations. Consequently any action by this Board fixing the wage rate for a new position on any such basis would be nothing more or less than the making of a new and different contract between the parties. Such an arbitrary assumption of power by this Board would contravene the express provisions of the Railway Labor Act.

The result is that a new position of Mail Foreman has been created in the Sacramento seniority district without any rate of pay therefor having been provided by the current agreement. Under such circumstances, the daily rate of \$6.35 cannot be shown to be in violation of the agreement. If the daily rate fixed by the carrier is not commensurate with the duties and responsibilities attaching to the position, negotiation affords the remedy.

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 record fails to establish a violation of the current agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 30th day of October, 1944.