

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Curtis G. Shake, Referee

PARTIES TO DISPUTE:

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

THE TEXAS MEXICAN RAILWAY COMPANY

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

(a) The Carrier violated the Clerks' Agreement when, on November 2, 1943, it abolished the position of Traveling Auditor—Claim Clerk, rate \$250.00 per month, and concurrently therewith created a position of General Clerk, rate \$235.40 per month, to perform substantially the same duties. Also

(b) Claim that the rate of \$250.00 per month be restored retroactive to November 2, 1943 and that all employees involved in or affected by the violation be compensated for all losses sustained.

EMPLOYEES' STATEMENT OF FACTS: On November 2, 1943 and prior thereto, Mr. F. R. Nye held position titled Traveling Auditor—Claim Clerk. The agreed upon rate of pay on November 2, 1943 was \$250.00 per month.

The duties assigned to and performed by Mr. Nye were:

- 1—Checking stations (4 or 5 days per month)
- 2—Handle Agents' accounts, make journal entry for same
- 3—Check Switching reports, make journal entry for same
- 4—Check demurrage
- 5—Per Diem reclaim
- 6—Make journal entry No. 11
- 7—Monthly adjustment of Railway Expenses
- 8—Complete Laredo Store special credit of monthly store issues
- 9—Handle distributions and reports of overcharge, agency relief and deficit claims
- 10—Make correction accounts on waybills subject of overcharge claims
- 11—Make summary balance of all correction accounts
- 12—Post divisions on State Waybills (except M. I. T.)
- 13—Post foreign line correction accounts and O.K. S/D's thereon

On October 26, 1943, the Carrier issued Bulletin No. 54, from which we quote the following:

"Effective November 2, 1943, the position of Traveling Auditor will be abolished. Checking stations on line will be assigned to the position of Assistant Auditor now held by J. W. Mussett, Jr."

The Company declined to change the rate of pay from \$235.40 per month to \$250.00 per month. The Clerks rely on Rules 51 and 49 of the current agreement. Such rules read as follows:

"Rule 51. Adjustment of Rates

When there is a sufficient increase or decrease in the duties or responsibilities of a position, or change in character of service required, the compensation for that position will be promptly adjusted by mutual agreement. But established positions will not be discontinued and new ones created under different titles covering relatively the same class of work for the purpose of reducing the rate of pay or evading the application of these rules.

Where the duties of a particular position are discontinued or so decreased in volume the remaining duties will be reassigned by the management (in accordance with Rule 49). The right of the Carrier to abolish such position is unquestioned."

"Rule 49. PRESERVATION OF RATES

Employees temporarily or permanently assigned to a higher rated position, or to the performance of a higher rated class of work, shall receive the higher rates; employees temporarily assigned to lower rated positions or a lower class of work, shall not have their rates reduced."

POSITION OF CARRIER: This is a case in which the Carrier abolished the position of Traveling Auditor-Claim Clerk and created a new position of General Clerk. The assigned duties of the new position did not carry the duties of a traveling Auditor, and the rate of pay was \$14.60 less than the monthly rate carried by the old position. The duties taken from the old position required from about five to six days each month auditing the various stations.

The Clerks claim that the duties of the new position cover relatively the same class of work as the old position and that, therefore, in accordance with Rule 51, the rate of pay should not have been decreased.

The Carrier clearly has the right to abolish any position. That is a universal rule of all labor agreements, and it is expressly written into Rule 51 of the agreement on this property. The sole issue is: Is the class of work of the new position relatively the same as the work formerly assigned to the old position? The Management contends that there is a very substantial and preponderating difference in the two positions.

The new position abolished entirely the Traveling Auditor's duties. This took up from about five to six days each month. It required the person holding this job to visit all the stations on the line and check and audit the accounts. Such work is one of trust, great responsibility and is really work defined by the Interstate Commerce Commission as that of a subordinate official. This duty was assigned to the Assistant Auditor, and his pay was increased \$14.60. Thus, there was no purpose on the part of the Management to reduce the rate of pay or evade the application of any rule. It was purely and simply a case creating a new job, and by no comparison of the two positions can it be fairly and reasonably said that the class of work for the two are relatively the same. Therefore, it is submitted that the claim of the Clerks should be denied.

OPINION OF BOARD: The carrier discontinued the existing position of Traveling Auditor or Traveling Auditor-Claim Clerk, rate \$250 per month, and established the position of General Clerk at a monthly rate of \$235.40. The petitioner asserts that the Traveling Auditor's rate was formerly \$235.40 and had been increased to \$250 by agreement, while the carrier asserts that

said increase was voluntary on its part. In the absence of a preponderance of evidence on the subject, we shall have to be content with the fact that the Traveling Auditor's established and prevailing wage was \$250 per month at the time the position was discontinued.

All of Traveling Auditor's duties were transferred to the General Clerk, except checking stations, which required from four to six days per month, in the aggregate. This work was assigned to the Assistant Auditor, a subordinate official not covered by the Agreement; and, concurrently, his salary was increased \$14.60 per month—the difference between the rate of the discontinued Traveling Auditor's position and that of General Clerk.

The petitioner contends that the occupant of the position of General Clerk performs relatively the same class of work as was formerly performed by the Traveling Auditor; and that the carrier, therefore, violated the effective Agreement by reducing the rate of pay applicable thereto, and, also, by transferring a part of the duties of said position to an official not under the Agreement. The carrier urges that the position of General Clerk was a new one, and that if the parties to the Agreement could not agree upon an appropriate rate of pay therefor the matter should have been made the subject of mediation.

Having disturbed the *status quo*, the carrier has the burden of establishing that its action in the premises comported with the terms of the effective Agreement. We cannot say, by way of conclusion from the meager facts before us, that the position of General Clerk did not cover relatively the same class of work as was performed by the Traveling Auditor. Award 1773. And even if it was so determined, the carrier would be confronted with the consequences of having arbitrarily removed a substantial amount of work from under the Agreement. Award 637.

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 the carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 7th day of December, 1944.