

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Richard F. Mitchell, Referee

PARTIES TO DISPUTE:

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

**GULF COAST LINES, INTERNATIONAL-GREAT NORTHERN
RAILROAD COMPANY, SAN ANTONIO, UVALDE & GULF
RAILROAD COMPANY, SUGARLAND RAILWAY COMPANY,
ASHERTON & GULF RAILWAY COMPANY**

(Guy A. Thompson, Trustee)

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

(a) The correct rate of pay for the position of Payroll Clerk, advertised in Bulletin 2-43 of January 11, 1943 is \$10.80 per day, effective January 18, 1943. Also

(b) The correct rate of pay for the position of Clerk Payrolls and Statistics, advertised in Bulletin 11-43 of February 1, 1943 is \$10.80 per day, effective February 6, 1943. Also

(c) Claim that all employees involved in or affected by improper rates being applied to the above positions be compensated for all losses sustained.

(The above rates are subject to the increases provided in the recent National wage settlement.)

EMPLOYEES' STATEMENT OF FACTS: On February 23, 1943 Local Chairman Sykes filed claim involving position of Payroll Clerk, as disclosed by his letter quoted below:

"Houston, Texas, Feb. 23, 1943

Mr. L. M. Edrington, Auditor,
N. O. T. & M. Ry. Co.
Houston, Texas

Dear Sir:

I wish to file claim for Miss Cora Helen Kendall, Payroll Clerk, on account of improper rate of pay on the position which was set up by Bulletin No. 2-43 of January 11, 1943, at a rate of \$7.62 per day, and assigned to Miss Kendall January 18, 1943.

Most of the duties assigned to this position were transferred from the position of Clerk Payrolls and Statistics at a rate of \$7.66 per day, however, some of the duties, such as checking rates of pay, balancing, checking quarterly reports to Railroad Retirement Board and Victory Tax Returns were transferred from the position of Assistant Chief Clerk Disbursements at a rate of \$10.80 per day.

assigned him if it is higher than the rate of his regular position, without the necessity of an agreement between the representative of the Carrier and representative of the Employees in each individual instance where it may be found necessary or desirable to make such a transfer. Under the provisions of this item (No. 4) of the proposed Memorandum the Carrier would no longer have this right. In view of the above the provisions of Item 4 of the proposed Memorandum were contrary to the provisions of the current working agreement and not justified.

Item 5—"Work which has heretofore been transferred and on which claims are now pending will be immediately returned to the position from which transferred."

The only claims pending insofar as the dispute in the instant case is concerned are those involving the two positions in question, viz: position of Payroll Clerk and position of Clerk Payrolls and Statistics. Therefore, the provision set forth in this item of the Memorandum has been satisfied with compliance of the provision set forth in Item 3 above, viz: the establishment of new position with rate of \$9.00 per day effective June 21, 1943 and assigning thereon the disputed work previously assigned on the positions of Payroll Clerk and Clerk Payrolls and Statistics.

(7) The establishment of the new position with rate of \$9.00 per day and placing thereon the disputed work previously performed on the positions of Clerk Payrolls and Statistics and Payroll Clerk eliminated any basis for the contention that those two positions were performing work transferred to them from the position of Assistant Chief Clerk Disbursements, rate \$10.80 per day. In other words, any basis for the contention and claim that the two positions in question are entitled to rate of \$10.80 per day has been removed.

In the light of the foregoing facts and circumstances set forth in this submission it is the position of the Carrier that the contention of the Employees should be dismissed and the accompanying claim accordingly denied.

OPINION OF BOARD: The claim in this case is based upon the allegation that the Payroll Clerk's position which was set up by Bulletin of January 11, 1943, at a rate of \$7.62 a day was improperly rated because most of the duties assigned to the position were transferred from the position of Clerks' Payrolls and Statistics at the rate of \$7.66 per day; however, some of the duties, such as checking rates of pay, balancing, checking quarterly reports to Railroad Retirement Board and Victory Tax returns were transferred from the position of Assistant Chief Clerk of Disbursements at the rate of \$10.80 per day and it is contended that his position should be rated at \$10.80 per day, effective January 18, 1943.

The second part of this claim is based upon the contention that the correct rate of pay for the position of Clerk Payrolls and Statistics, advertised in Bulletin of February 1, 1943, should be \$10.80 per day.

It is the contention of the Petitioner that some of the duties of each of these two positions were previously performed on the position of Assistant Chief Clerk of Disbursements, rate \$10.80 per day, and under the provisions of Rules 49, 50 and 51, the two positions in question should be so rated as of date of establishment.

The file in this case, Docket CL-2701, contains 161 pages and in Docket CL-2700, which is a companion case, the file contains 203 pages. We believe that no good could be accomplished by a long and detailed statement of the claims set forth in these dockets. The Referee has read and studied all of the matter set out by both parties.

Sometime after the submission of the claims, negotiations were entered into by the representatives of the Employees and the Carrier with the hope that a settlement and an adjustment might be worked out. There is a large volume of correspondence covering these negotiations and it was finally

agreed, that a new position would be created with the rate of \$9.00 per day with all the disputed items of work assigned to the new position.

There is in the record considerable correspondence covering these negotiations and whether or not retroactive pay should be allowed. However, it was agreed that the effective date would be June 21, 1943, and on that date the new position with the agreed rate of \$9.00 per day with the disputed items assigned to it would become effective.

On July 10, 1943, the General Chairman submitted what is referred to as a memorandum setting forth the conditions which he understood were necessary to be met by the Carrier in order to settle the claims involved in both of these dockets. It is true that the Employees contend these questions had been raised before that time but there is no written evidence until July 10, 1943, which was after the Carrier had set up the new position of \$9.00 per day which became effective June 21, 1943.

The memorandum proposed by the General Chairman in his letter of July 10, 1943, contained four items; first, rate of the position of Payroll Clerk at \$9.00 per day, effective June 1, 1943; the record shows that this was complied with, the General Chairman having agreed on July 26th that the date should be June 21, 1943; second, the position of Clerk, Payrolls and Statistics, must remain at \$7.66 per day; the record shows that this was complied with; Item 3, the work to be assigned to and performed by these two positions to be that shown on Bulletins of January 11th and February 1st, 1943, with all of the disputed items of work assigned to the Payroll Clerk at rate of \$9.00 per day; the record shows this was complied with; Item 4, that the practice of transferring work from one position to another must be discontinued immediately and can hereafter be done only by agreement between the representatives of the Carrier and the Organization. This Board is of the opinion that there was no occasion or necessity for the inclusion of this provision as a condition of settlement of this controversy. This feature is adequately provided for by Rule 50 of the Clerks' Agreement.

This Board is also of the opinion that the negotiations for the settlement of these claims were completed before the memorandum by the General Chairman was submitted. The Employees, by the creation of the new position and transferring of the disputed work to that position secured just what they were attempting to secure by the long negotiations which took place between the Carrier and the Employees. It is our opinion that an agreement was fairly entered into and that the Employees are bound by that agreement.

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 there is no showing of a violation of the current agreement as contended by the Petitioner.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 26th day of January, 1945.