

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Jay S. Parker, Referee

PARTIES TO DISPUTE:

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

WABASH RAILROAD COMPANY

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

(a) Carrier disregarded provisions of Rule 2, paragraph (i) of the Schedule for Clerks effective August 1, 1929, when on or about April 7, 1943, a new position was bulletined as Night Yard, Bill and Ticket Clerk and established in the ticket office at Fort Wayne, Indiana, with a daily rate of \$6.01.

(b) Basic daily rate of new position should have been \$6.37 when created on or about April 7, 1943, so as to conform to basic daily rate of similar position in the office; duties of new position being of similar class and kind and of equal importance to those assigned to position with daily rate of \$6.37.

(c) Position to be rebulletined with proper daily rate which is now \$7.09 per day, and the occupant or occupants of the new position compensated for basic difference of 36 cents in daily rate of the two positions, effective with date the new position was established.

EMPLOYEES' STATEMENT OF FACTS: A bulletin notice dated April 7, 1943, was issued by Superintendent Flynn, Montpelier Division, creating a new position in the Fort Wayne Ticket Office, and designating the position as Night Yard, Bill and Ticket Clerk. Hours of assignment 1:00 A. M. to 10:00 A. M., one hour for lunch, seven days per week, rate \$6.01 per day.

Bulletin notice dated April 26, 1943, was issued, discontinuing position with title of Night Yard, Bill and Ticket Clerk, and on April 26, same date, the position was rebulletined with title of Ticket Clerk, same hours of assignment, 1:00 A. M. to 10:00 A. M., seven days per week, rate \$6.01 per day. Clerk H. R. Miller who was assigned to the position under the initial bulletin of April 7, was again assigned under bulletin of April 26. Letter of Superintendent F. C. Flynn, Montpelier Division, is reproduced below in support of the above statement of facts.

"Montpelier, Ohio, May 3, 1943.

45.47-H

Mr. J. D. Rogers,
Gen. Chairman B. of R. & S. C.,
209 College Ave.,
Moberly, Mo.

Dear Sir:

Referring to your letter April 29th, no file, in connection with clerical position at Fort Wayne passenger station:

As shown by the Carrier's Statement of Facts, the position of Ticket Clerk on the third shift maintained in the Ticket Office at Fort Wayne prior to October 2, 1931, was re-established in that office on or about April 12, 1943, and therefore, the action of the Carrier in applying the rate in effect on October 2, 1931 plus subsequent increases was correct and in keeping with the provisions of the Schedule for Clerks.

Furthermore, it has always been the practice in the application of the rules of the Schedule for Clerks, when re-establishing positions which had been discontinued at some prior date, to apply the rate in effect at the time the position involved was discontinued, plus any increases which had been granted in rates subsequent to the date the said position was discontinued. In that connection, attention is invited to a position of Yard Clerk, rate \$4.36 per day, at Hannibal, Missouri, which was discontinued on or about February 29, 1932, and re-established on October 9, 1942. The correspondence in connection therewith has been reproduced and is submitted herewith and made a part hereof (marked Carrier's Exhibit "A").

For the information of the Board the clerical force employed at Hannibal prior to February 9, 1932, was as follows:

Title	Rate
Chief Yard Clerk	\$5.44 per day
Yard Clerk	4.36 " "
Per Diem Clerk	4.86 " "
Yard Clerk	4.36 " "

and the clerical force employed at Hannibal immediately prior to the re-establishment of the position of Yard Clerk, rate \$5.56 per day, effective October 9, 1942, was as follows:

Title	Rate
Chief Yard Clerk	\$6.64 per day
Per Diem Clerk	6.06 " "

The disposition of the case with respect to the rate applied to the position of Yard Clerk re-established in Hannibal Yard effective October 9, 1942, is conclusive evidence that the alleged claim set up in the Committee's ex parte Statement of Claim is without foundation under the rules of the Schedule for Clerks.

Attention of the Board is also directed to the fact that the duties and responsibilities of the position of Ticket Clerk re-established in the Ticket Office at Fort Wayne on or about April 12, 1943, are not comparable with the duties and responsibilities of the position of Night Bill and Ticket Clerk maintained in that office, and in that connection, attention is invited to the fact that the receipts for the sale of tickets by the incumbents of the position of Ticket Clerk, rate \$6.73 per day, average approximately \$80.00 per day, whereas the receipts for the sale of tickets by the incumbents of the position of Night Bill and Ticket Clerk at that point average approximately \$370.00 per day.

That is conclusive evidence that the request of the Committee for an increase in the daily rate of the position of Ticket Clerk from \$6.73 per day to \$7.09 per day is not justified.

The foregoing shows that the request of the Committee for an increase in the daily rate of the position of Ticket Clerk at Fort Wayne is without foundation under the rules of the Schedule for Clerks, therefore, the contention of the Committee should be dismissed and the claim denied.

OPINION OF BOARD: What are deemed to be the controlling facts in this case will be stated. On or about April 12, 1943, "On account of a material increase in passenger traffic," as stated by the Carrier, it was necessary to

establish a new clerical position at Fort Wayne, Indiana. At first, the Carrier bulletined the position as Night Yard, Bill and Ticket Clerk, hours 1:00 A. M. to 10:00 A. M., rate \$6.01 (now \$6.73) per day, and Clerk H. R. Miller was assigned thereto. Upon complaint of the Petitioner protesting the rate of pay as not having been established in accordance with the provisions of the collective Agreement, also that the title of the position was improper, under date of April 26, 1943, Carrier discontinued the position established on or about April 12, 1943, and rebulletined it as "Ticket Clerk," same hours of assignment and same rate of pay. Clerk H. R. Miller was again assigned to the position.

Petitioner states that the rates of pay for positions of similar kind or class at other stations on the Montpelier Division, this seniority district, and which do not have as much passenger business as at Fort Wayne, are:

Peru, Indiana	\$7.02 per day
Lafayette, Indiana	7.08 per day
Wabash, Indiana	7.02 per day,

also that at the time the position in question was established there was a Night Bill-Ticket Clerk position at Fort Wayne, rate \$6.37 (now \$7.09) of similar kind or class, and contends that under the provisions of Rule 2 (i), the rate of pay of the position in dispute should have been set at that same rate. On the other hand, the Carrier claims that none of the positions just mentioned are of similar kind or class.

The rate of \$6.01 per day for the involved position was taken from a formerly existing position of Ticket Clerk at Fort Wayne, \$4.81 per day which was discontinued or abolished on October 2, 1931. By adding the general wage increases of August, 1937, and December, 1941, of 40 cents and 80 cents per day, respectively, Carrier fixed the present rate of \$6.01. The duties of such position include ticket sales and inquiries, working bills for freight house, billing of carloads and the handling of mail and baggage. Ticket sales and inquiries are not confined to any one period but are scattered throughout practically the entire tour of duty.

The rule relied on by the Petitioner as sustaining its claim is Section 2 (i) of the current agreement which 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."

Salient questions involved are (1) was the instant positions a new one within the meaning of the rule and if so (2) was it, when created, similar in kind and class to other positions within the seniority districts?

With respect to the first question it is argued by the Carrier the present position was simply re-established and that, therefore, the wage rate fixed on its old basis was proper because of agreement between the parties and their past practices. The phase of the argument dealing with agreements and practices when old positions are reestablished need not be considered for reasons presently to be disclosed. The position from which the present rate was taken was discontinued or abolished more than eleven years before the present one was bulletined or assigned. We think a fair deduction from the record is that it was abolished, not discontinued but it matters little which construction be placed upon that action. By all well known definitions "to abolish" means to do away with or put an end to, while "to discontinue" contemplates the breaking off of or putting of an end to existing situations or conditions. We are not inclined to predicate our decisions solely upon the meaning of words but of a certainty resort to the meaning of both terms impels the view the position when created was a new one. If other proof be required to evidence that this be true it can be found in the conduct of the Carrier, which the record reveals entirely rearranged the administrative affairs of its office at Fort Wayne from 1931 to 1938 and in that process decreased its force, created new positions while combining them with others

and assigned tours of duty which were entirely dissimilar. So much so that we cannot be certain what position, if any, was reestablished by the present one. Moreover, we are fortified in our opinion by prior decisions of this Division (See Awards 2215 and 2487). This conclusion also disposes of the argument the claim is for a change in the rate of pay for a position and, therefore, without the Board's jurisdiction unless, of course, and we are not disposed to do so as will be subsequently disclosed, it should be held that no other positions of similar kind and class existed in the required seniority district.

As is obvious the question of whether when the Clerk's position in controversy was created there were other positions of similar kind and class in the seniority district is one of fact to be determined from the record. If there were it is not seriously argued that the rule was observed or that its force and effect is other than that placed upon it by the Employees.

We turn, therefore, to consideration of the factual situation. Regarding it, there is no uniformity of approach so far as the parties are concerned, petitioner contending that all the existing positions heretofore mentioned fall within the rule and the Carrier just as strenuously arguing that none of them can be so regarded.

So far as the Peru, Lafayette and Wabash offices are to be considered, aside from affirmations by one party and denials by the other, our search of the record discloses so little evidence with respect to the real situation existing there that we doubt if it can be held, even though it is entirely possible the fact could have been established, there was sufficient evidence to substantiate Petitioner's claim they were of similar kind and class. Thus eliminated, the only other position remaining in the seniority district and alleged to possess the required attributes is the position of Night Bill and Ticket Clerk then in existence at Fort Wayne. We turn again to the record. From it certain facts are discernible which can be thusly stated. It appears that by virtue of the manner in which the Fort Wayne office was operated both the Ticket Clerk and the Night Bill and Ticket Clerk were each required to assume and perform other duties than those of a ticket clerk, depending upon what was required to carry on the general business of the office during their respective tours of duty. Nevertheless, the principal duties of each, which it may be said were not confined to any particular portion of the day but extended throughout the tours of duty of each, were those of "Ticket Clerk" proper within the meaning of that term as used in common parlance. Although it must be conceded some of the other duties performed by such parties were not identical, most of them were similar in nature and, as we have indicated, all of them appear to have been performed in view of the necessity of the conditions confronting each individual on his own particular tour of duty at a time when he was in sole charge of the Ticket Office. Otherwise stated, it appears that each position was primarily that of a Ticket Clerk rather than something else and that the additional services required were more for filling spare time while the Ticket Clerk was on duty than anything else. On that account and in view of the other facts and circumstances here involved, we conclude such other duties are not controlling in determining the true kind and class of the positions in question. From all these facts and for reasons presently mentioned, while it must be conceded the record could be more convincing, we further conclude that when the involved Clerk's position at Fort Wayne came into existence it was similar in kind and class to the position of Night Bill and Ticket Clerk in the office on the same property.

A re-examination of the duties performed on both positions does not preclude adherence to this conclusion but on the contrary fortifies and supports it. The same holds true of the Carrier's denial the duties were similar. The gist of its argument is that the duties and responsibilities were not of like nature because of differences in the amount of ticket sales. That is not the test. See Award 1861, wherein it was said:

"Rule 51 (a) under which this dispute is brought to the Board 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.'

Under this rule it is necessary for a new position to receive the rate of an existing position to show that (a) it is in the same seniority district and (b) is of a similar kind or class. It does not have to have equal responsibilities in the sense that duties and services are identical, nor does it necessarily require supervision of work of equal importance in the sense just mentioned. It may still be of equal importance and responsibility."

The same reasoning and conclusion is to be found in Award 2678. We also note the Carrier makes no serious attempt to refute the Petitioner's argument that the duties other than those of a Ticket Clerk proper were of similar character, even though somewhat different because of the time and conditions under which each employe was working. What we have just mentioned merely fortifies our conclusion that the claim of Petitioner that the two positions at Fort Wayne were of similar kind and class was sufficiently established by the Petitioner to justify the rendition of an affirmative award.

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 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 facts of record require a decision that the Ticket Clerk's position established at Fort Wayne was a new one similar in kind and class to that of the position of Night Bill and Ticket Clerk then in existence at the Carrier's Ticket Office in such city.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 21st day of February, 1945.