

Award No. 3010

Docket No. CL-2942

**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**

ILLINOIS CENTRAL RAILROAD COMPANY

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

(1) the Carrier violated the Clerks' Agreement when it failed and refused to apply the proper rate of pay to two positions of ticket clerk newly created at Ft. Dodge, Iowa, and

(2) that the occupants of these two positions be paid at proper ticket clerks rate as of April 28, 1943.

EMPLOYEES' STATEMENT OF FACTS: Prior to October 1942 the force employed in the Fort Dodge Ticket Office consisted of one ticket clerk on day shift, rate \$5.84 per day and three telegraphers (one on each trick) who handled the train order work, sent and received messages by morse code and by telephone and sold tickets for night trains in connection with their telegraph work. When business increased, the telegraph operators were moved into the freight and yard office building where the Train Master, Train Crew Boards and Train Order Office are located and in October 1942, the second position of ticket clerk was created at rate of \$5.35 per day, the third position of ticket clerk being created in April of 1943. Since April 1943 only the three ticket clerks have been employed in the Ticket Office at Fort Dodge their duties being to make reports and sell tickets for Illinois Central and M. & St. L. Trains.

When the position created in April 1943 was advertised on Vacancy Bulletin No. 3 written protest was immediately filed and claim entered in behalf of occupants of the second and third trick positions for the difference between \$5.35 and \$5.77 per day.

Employees claimed violation of Rule 49 and requested proper rate of \$5.77 for the two new ticket clerks positions. They based their rate for new positions on the rates paid for similar kind or class of positions in the seniority district where created, which is the Iowa Division. Comparable ticket clerk positions on this division were as follows:

Rockford	6.05	(4 positions)
Freeport	5.92½	and 5.77
Dubuque	6.13½	and 5.77
Waterloo	6.18½	and 5.77
Fort Dodge	5.84	(day shift)

At the other stations listed above an experienced ticket agent is in charge. At Fort Dodge, there is no ticket agent. Each ticket clerk is responsible for his own shift. In other words, each ticket clerk at Fort Dodge is on his own responsi-

The practice described herein has been followed for more than twenty years. If this practice is now changed merely because of awards or conditions prevailing on other properties, then the past practices covered by Award 2436 in conflict with the language of the prevailing agreement must be likewise reversed.

The assignment of the position in the initial claim is from 12 midnight to 8:00 A. M. The duties on the assignment are the same today as they were in years following 1924, viz., to sell tickets and perform incidental clerical work on that trick. The rate is the same as paid similar clerical positions at other points in the same seniority district, and the detailed duties and responsibilities are less than on similar positions on the first trick receiving the same rate at other points on the same seniority district.

In Third Division Awards 1839 and 1842 this Board held that rates on positions that had been abolished for about seven years should be restored when the same positions were restored, notwithstanding there apparently was no agreement setting up established rates for positions as in this case.

The summarized position of this Carrier is:

1. That the positions in question are not new positions subject to the provisions of Rule 49;
2. That the positions in question were re-established or restored on the same basis as when previously existing, excepting for subsequent general adjustments in the rate structure;
3. That this procedure is in accordance with the established practice prevailing on this property since the 1924 agreement;
4. That practice is fully supported by the employees' previous cases hereinbefore cited;
5. To require a change would necessitate negotiation of new rules agreement not within the province of this Board;
6. To attempt to apply a decision applicable to one Carrier to other Carriers where the conditions are not relevant would result in changing back and forth and result in a chaotic situation;
7. The Carrier has met all of the requirements designated by its rules and practices in effect.

In conclusion it is the position of this Carrier that:

- (a) The proper rate of pay has been applied, and
- (b) They are not newly created, but are re-established positions formerly in effect for relatively the same class of work.

Therefore, it is requested that the claim of the employees be denied in its entirety without qualification.

OPINION OF BOARD: The question is whether the Claimants occupy new or reestablished positions. If the positions are new the claim must be sustained, in principle, by virtue of Rule 49 of the Agreement effective June 23, 1922; but if there was merely a reestablishment of discontinued positions the action of the Carrier in applying the rates in effect when the discontinuance occurred and adding thereto all subsequent wage increases was proper.

On account of a substantial decrease in the volume of business, the Carrier, in 1932, consolidated its division offices at Fort Dodge and Dubuque, with new headquarters at Waterloo. Prior to this consolidation there were three ticket clerk positions in the Fort Dodge office, rated as of October 16, 1923, as follows:

First trick,	\$4.42
Second trick,	4.03
Third trick,	3.95.

When the consolidation took place the above-mentioned ticket clerks positions were discontinued and the functions thereof transferred to three telegrapher-clerks who were moved into the office. This situation continued until May, 1936, when the first trick clerk's position was filled and it has since been

occupied by an employe with wages that reflect the basic rate in effect since 1923, to which the intervening increases have been added. The second and third trick positions, with which we are here concerned, were subsequently bulletined as vacant and restored on October 22, 1942 and April 26, 1943, respectively, with rates calculated in the same manner as those applied to the first trick position. It is the Petitioner's contention that the occupants of the second and third tricks should be considered as the holders of new positions and that, under Rule 49, their wages should "be consistent with wages for positions of similar kind or class in the seniority district where created."

We have found no prior award of this Board laying down a comprehensive formula for determining whether a particular position once discontinued and subsequently restored is to be treated as new or reestablished. It does appear, however, that the element of the intervening time has been considered an important circumstance in resolving such questions. See Awards 2808 (eleven years), 2732 (twelve years) and 2215 (fifteen years). And in Award 2239 controlling significance was attached to the fact that the carrier did not by apt and proper language evidence its intention at the time of the discontinuance and did not thereafter bulletin the position as a reinstatement. Here, likewise, there was no reservation as to its future intentions on the part of the Carrier at the time the positions were discontinued; ten years, or more, elapsed before any steps were taken to restore them; and the positions were then merely bulletined as vacant, which was as consistent with unoccupied newly-established positions as with those that had been revived or reestablished. Bearing in mind, also, that the services formerly rendered by the occupants of these positions had, in the interim, been performed by employes covered by another agreement, we feel obliged to conclude that the Claimants are occupants of "new positions" within the meaning of Rule 49.

The Carrier has also urged and endeavored to substantiate that the Petitioner has acquiesced in, if indeed it has not encouraged and promoted, past practices entirely compatible with what was done in this case. We have carefully considered that matter and about all that we have been able to deduce therefrom is that each of the parties has been disposed to take whichever stand appeared to it to be most advantageous, without much regard for consistency.

When this claim was considered on the property, it was erroneously assumed, that the seniority district covering the Fort Dodge ticket office embraced the whole Iowa Division; and the claim as here presented is predicated upon a comparison of rates prevailing at various offices in that Division, instead of "wages for positions of similar kind or class in the seniority district," as required by Rule 49. This Board cannot, in the first instance, determine the appropriate rate, and the dispute will, therefore, be remanded for the proper application of Rule 49, which we hold is applicable and has been violated.

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 Carrier violated Rule 49 of the Agreement.

AWARD

Claim sustained and remanded to the extent indicated in the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary.

Dated at Chicago, Illinois, this 7th day of December, 1945.