

Award No. 3033

Docket No. CL-2978

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Luther W. Youngdahl, Referee

PARTIES TO DISPUTE:

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

**THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD
COMPANY**

Howard S. Palmer, James Lee Loomis, Henry B. Sawyer, Trustees

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, that

(1) The Carrier violated the Clerk's Agreement by failing and refusing to rate Position No. 985, advertised in Vacancy Bulletin No. 335 of July 9, 1943, at \$44.99 per week, and

(2) Claim that all employees involved in or affected by the above agreement violation be compensated for all losses sustained retroactive to July 10, 1943.

EMPLOYEES' STATEMENT OF FACTS: On July 9, 1943 U. S. Mail Accounts Section of the Foreign Interline Bureau was composed of four positions, the position numbers and titles, incumbents, rates of pay and monthly duties being as follows:

Position No. 926--Assistant Bureau Head-Clerk Mr. George Breuler, Rate \$48.85 per week	Days per month
Verifying and putting in order 5365 and 5369 slips	1
Billing emergency slips on affidavits	10
Checking at New Haven P. O. District No. 5	2
Checking at Superintendent's Office Boston P. O.	2
Checking through cars from Stationmaster's reports and card manifests	2
Checking storage car numbers for duplication	1
Inserting miles, trips and rates on affidavits	1
Adjustments on returned affidavits	1½
Revenue per annum statements	1
P. O. fines and payments	1
Supervision	3½
 Position No. 839--Clerk R. J. Sheehan, Rate \$44.99 per week	
Auditing Train Baggage-master's U. S. Mail reports (Western end of road), and preparing slips showing excess mail to be charged to P. O. Department	12½

will have been sorted with those dated in August and should be investigated on that basis.

When investigating unreported tickets for large roads which do not render reports in alphabetical selling station order, arrange tickets in the boxes in alphabetical selling station order and check the stations on each sheet of report to avoid time required to locate the reporting stations.

Place tickets for which reporting is located in "trash" bag at close of each day.

Prepare tracers in duplicate on standard form for tickets which cannot be located, attaching tickets to tracers to be sent selling carrier, except in instances of large numbers of unreported tickets which shall be referred to Bureau Head before preparing tracers.

Give all tracers to Bureau Head at close of day for review before mailing.

It so happens that these particular positions are in the Foreign Interline Bureau branch of the seniority district, and there are numerous others in the other five bureaus of the seniority district.

To perform the duties of this position requires relatively little experience and, as has been shown, can be properly compared only with other positions paying \$31.20 per week (present rate \$35.52 per week). We hold that in establishing a rate of \$31.20 per week (present \$35.52) that the provisions of Rule 64 that:

"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."

had been strictly complied with.

OPINION OF BOARD: Prior to July 10, 1943, in the U. S. Mail Accounts section of the Foreign Interline Bureau, there were four positions, viz:

No. 926 Assistant Bureau Head Clerk	at \$48.85 per week
No. 839, Clerk	at 44.99 per week
No. 871, Clerk	at 42.75 per week
No. 830, Clerk	at 40.75 per week

Effective July 10, 1943, Carrier created a new position in the Mail Accounts section, \$985 rated at \$31.20 per week.

This claim arises because of a dispute between the parties as to the nature of the duties of the new position and its proper classification. Carrier asserts that the newly created position is of similar kind or class to the 59 minimum rated positions at \$31.20 per week in the same seniority district. Organization contends that the position is of a similar kind or class to the two top ranking positions in the Mail Section, No. 926 and No. 839, and that the position is at least entitled to a rating of the second position, No. 839 at \$44.99 per week.

The applicable rule of the Agreement which pertains to the instant dispute is Rule 64 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."

It is to be noted that the rule does not provide that the positions shall have the same responsibilities but merely that they be of similar kind or class. It is also to be noted that they are to be of similar kind or class in the seniority district where created rather than in any section or bureau thereof.

The question then is: Was this position of the same kind or class as the 59 minimum rated positions in the same seniority district, or was it similar in kind or class to position No. 839 in the Mail Section?

There is some dispute as to how much work was transferred to this new position from the Mail Section. Carrier estimates fourteen to fifteen days work per month of twenty-six days was transferred, whereas Organization contends that nineteen days work was transferred. Apparently some work was transferred from each of the positions in the Mail Section to the new position. Although Organization asserts that the greater number of days work was transferred from the top ranking position—No. 926—it seeks only a rating of the position No. 839 at \$44.99 for the new position. While Carrier concedes that some of the work from these positions was transferred to the new position, it asserts that the work transferred was of a simple non-technical nature and that the entire work of the new position was of the same kind or class as 59 minimum rated positions in the seniority district. Organization on the other hand contends that the new position is not of a similar kind or class to the other 59 positions and that because a substantial part of its work is work transferred from the two top positions in the Mail Section, it at least is of the same kind or class as the second position, No. 839.

After a careful consideration of the record, the Board concludes that the new position cannot be definitely identified as of the same kind or class as position No. 839 in the Mail Section. Neither, in the Board's opinion, is this position similar in kind or class to the 59 minimum rated positions in the seniority district as it does not appear from the record that any of the other 59 positions in this seniority district involve any duties transferred from the Mail Section.

Because this position is not similar in kind or class to the positions claimed by the respective parties and because this Board is without jurisdiction in the first instance to determine the appropriate rate (Award 3010) the claim must be remanded to the property for the purpose of negotiation in order to establish a proper rate for this position.

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 newly created position No. 985 is not similar in kind or class either to position No. 839 or to 59 minimum rated positions and that negotiation is necessary to establish a proper rate for the position.

AWARD

Claim remanded to the property for the purpose of negotiation as to a proper rate for the position.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary

Dated at Chicago, Illinois, this 14th day of December, 1945.