

Award No. 3164
Docket No. CL-3068

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES
THE ATCHISON, TOPEKA AND SANTA FE RAILWAY
COMPANY**

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

(1) Position No. 161, Barstow, California, presently classified as Assistant Roundhouse Clerk, rate of \$5.73 (now \$6.51) per day, is improperly classified and rated; and

(2) Said position is in fact that of Roundhouse Clerk and the same shall be so reclassified and rate at \$6.95 (now \$7.67) per day with appropriate adjustment in wages paid thereon retroactive to date of establishment, December 20, 1941.

EMPLOYEES' STATEMENT OF FACTS: As of December 20, 1941, there were three positions at Barstow, classified as Roundhouse Clerks, rate of \$6.95 (now \$7.67) per day, assigned round-the-clock, seven days per week, with starting time 7:00 A. M., 3:00 P. M., and 11:00 P. M.

Effective December 20th a fourth position was established and advertised for bids in Master Mechanic's Bulletin No. 205 which we quote in full:

"ATCHISON TOPEKA AND SANTA FE RAILWAY—COAST LINES

OFFICE OF MASTER MECHANIC

Bulletin No. 205:

Needles, California,

December 19, 1941.

To Clerks: Arizona Division

Mechanical Department

Bids will be received in my office until 10:00 A. M., December 24, 1941, for one Assistant Roundhouse Clerk—Barstow—new temporary assignment, 60 days duration.

This position assigned to work 7 days per week, hours from 8:00 P. M. to 5:00 A. M., with one hour lunch period. Rate of pay \$4.93 per day for one with 18 months or more clerical experience.

responsibility to establish a rate which must govern unless it can be shown that the Carrier failed to comply with the rule or abused its discretion. Such a showing has not and cannot be made in this dispute.

As to Sections 1, 3(a) and (b) of Article XII of the December 1, 1929 Agreement, also cited by the Employees as support for their claim, the Carrier asserts that none of these rules contain anything pertinent to the instant claim. Positions have been rated. Rates have not been transferred from one position to another. No one was assigned to a "higher rated position" or had his rate reduced by assignment to a lower rated position. Likewise, no one was required to fill a "temporary assignment" on a regular position temporarily vacant.

The employees have indicated in their handling of this dispute on the property that the re-bulletining of Position No. 161 on December 20, 1941 lends support to their contention that the position should be classified as a Roundhouse Clerk. This contention is, no doubt, based on the language contained in Bulletin No. 205 which, as stated in the Carrier's Statement of Facts, not only improperly advertised the position as a temporary assignment of 60 days, but also improperly described the duties of the new position. This was corrected in Bulletin No. 206 dated December 20, 1941, and the best evidence that the incumbent of Position No. 161 has not been required to be familiar with or assume the duties connected with the handling of the Enginemen's Board is found in the complete absence of any information in (1) the joint check and (2) the Employees' minute by minute statements of the duties assigned to Position No. 161 (Carrier's Exhibits "A" and "B"), which indicates that the incumbent of Position No. 161 was performing such duties.

In conclusion, the Carrier asserts that:

(1) The Third Division, National Railroad Adjustment Board is without jurisdiction to render an award in this dispute in the absence of proper authority from the unidentified claimant employees authorizing the Brotherhood representatives to handle the claim.

(2) In the absence of a position of a similar kind and class on the seniority district, the rate established by the Carrier is proper and the Third Division, National Railroad Adjustment Board has no authority to establish a different rate of pay for Position No. 161 at Barstow.

(3) The Carrier's re-classification of Position No. 161 to "Report Clerk" at a rate of \$7.52 (\$6.00 in 1941), effective December 1, 1944 and its offer to make that re-classification retroactive to December 20, 1941 was also fully in accord with the provisions of Article XII, Section 5 of the governing agreement as interpreted by the Third Division.

The Carrier has not been favored with nor privileged to review the submission of the Organization in this dispute, and is, therefore, not informed with respect to any alleged facts, contentions or other material which such submission may contain. The Carrier accordingly reserves the right to submit such additional facts and evidence as it may conclude are required in reply to the ex parte submission that the Organization intends to file with the Board, as per notice of its Grand President dated May 12, 1945, or any subsequent oral argument or briefs of the Organization in this dispute.

OPINION OF THE BOARD: On December 20, 1941, the Carrier bulletined a new position of Assistant Roundhouse Clerk at Barstow, California, rate \$4.93 per day, hours 8:00 A. M. to 5:00 P. M., with one hour for lunch. The Organization contends that the position should have been designated and rated as a Roundhouse Clerk with a rate of \$6.15 per day (now \$7.67). The applicable rule is Article 12, Section 5, of the Agreement dated December 1, 1929, reading as follows:

"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 the position of the Carrier that there is no other position of similar kind or class in the seniority district where the position was created and, this being so, the Agreement does not provide for the fixing of the rate of pay for the position.

The Organization asserts that there are three Roundhouse Clerks in Barstow, assigned to work around the clock. It appears that the work of the three Roundhouse Clerks became too burdensome and the position of Assistant Roundhouse Clerk was created to absorb the additional work. It is the contention of the Organization that the duties assigned to the new position were solely those of a Roundhouse Clerk and that it should be so designated and rated.

The Carrier contends that the major duties of a Roundhouse Clerk are those attached to the handling of engines and engine crews. The occupants of those positions must be familiar with the different types and classes of power and with the seniority and assignment of work rules of engineers and firemen in handling of bid bulletins, crew boards and other matters involving engine crews. There being no such duties attached to the newly created position, it is argued that it is not a position of similar kind or class as a Roundhouse Clerk.

The Organization points out, however, that there are two positions at Needles, California, and within the same seniority district, designated as Roundhouse Clerks whose duties include little, if any, of the major duties which the Carrier claims are essential to such a position. We think these two positions are so similar to the newly created position that the Carrier is required by the cited portion of the controlling Agreement, to designate it as Roundhouse Clerk and assign to it the rate of pay of that position.

The record shows that the Carrier, during the course of the negotiations, reclassified the position as a Report Clerk with a present rate of \$7.52 per day. It is clear, however, that the reports and other work which afford the basis for the name "Report Clerk", were a substantial part of the work of the three Roundhouse Clerk positions. The Carrier cannot escape the effect of the rule by giving the position a different name, however appropriate it might be.

We conclude after an examination of the record and the previous Awards of this Division bearing upon the subject that the position of the Organization is correct and that an affirmative Award is required.

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 Contract was violated as charged.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 17th day of April, 1946.