

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**

**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 File Clerk No. 2 in the Superintendent's Office at Palestine, Texas, is \$6.97 per day; also
- (b) Claim that all employees involved in or affected by the position being improperly rated be compensated for all losses sustained.

EMPLOYEES' STATEMENT OF FACTS: On August 11, 1943, the Assistant Chief Personnel Officer wrote the General Chairman as follows:

"We desire to place in service an additional File Clerk in the Superintendent's Office at Palestine for a period of six months, the position to carry the same rate (\$5.24 per day), the same assignment (7 days per week), and be considered an excepted position as the present File Clerk.

"Would appreciate advice of your approval of this assignment."

The General Chairman replied on August 16, 1943, stating.

"We are unable to agree that the additional position which you state the Carrier desires to create should be excepted from any of the provisions of our agreement."

On August 31, 1943, Bulletin No. 20 was issued advertising the position with an annual assignment of 306 days, but with no change in the daily rate.

only be unfair to the Carrier, but to other members of the Organization. It would result in this claimant receiving a higher rate of pay than any other Bill Clerk in that seniority district, including the Chief Bill Clerk. We cannot believe that any of the parties to this dispute intended any such unfair result.

"We must conclude that the monthly rate fixed by the Carrier, bid on by the claimant, and approved by the continued silence of the Organization for more than five months, was the existing daily rate for Bill Clerks, times the number of days per month the employee was regularly assigned to the work. Since this could only be 25½ days per month, on the basis of a 306-day assignment, the correct rate of pay for the position was \$170.60, the same wages then being received by the other Bill Clerks in that seniority district."

Attention is also directed to the following comment of the Board included in the above quotation:

"We must conclude that the monthly rate fixed by the Carrier bid on by the Claimant, and approved by the continued silence of the organization for more than five months, was the existing daily rate for Bill Clerks * * *"

In the case under consideration the Carrier has shown that the position of File Clerk No. 2 was created by Bulletin No. 20 dated August 31, 1943, assignment made by Bulletin No. 20-1 dated September 11, 1943, and that the first exception taken to the rate of pay established thereon was the Local Chairman's letter to the Superintendent under date of May 19, 1944, more than eight months later.

When consideration is given to the fact that:

1. The daily rate placed on the position of File Clerk No. 2 in the Superintendent's Office was the same daily rate as that on the position of File Clerk that had been established for many years in that same office;
2. The provision of Rule 51, Paragraph (a) provides that "The wages of any position shall be in conformity with the wages of similar kind or class in the Seniority District where created";
3. To sustain the Employees' contention and claim would result in the new position, which is in fact more or less of an assistant to the old established position of File Clerk, receiving \$1.01 per day more than the old established position, thereby permitting the occupant of the new position to earn the same annual compensation in 306 days as that earned by the old established position of 365 days, which would obviously be most illogical and inequitable;
4. The letter agreement of October 13, 1940 does not apply to and, obviously, was not intended to apply in the case under consideration where a new position is created;
5. The "Opinion" and "Findings" of the Board in Award No. 2272 which declined a similar attempted application of an identical letter agreement;

it is clearly evident that the contention and claim set forth in the Employees' Ex Parte Statement of Claim is entirely without merit or basis and, therefore, the contention of the Employees should be dismissed and the claim accordingly denied.

OPINION OF BOARD: In September 1943, Carrier established in the Superintendent's Office at Palestine, Texas, a new position of File Clerk

No. 2 at the rate of \$5.24 per day on an annual assignment of 306 days. There was in existence at that time an excepted position of File Clerk with a rate of \$5.24 per day on an annual assignment of 365 days. It is evident that the daily rate assigned to the new position was the same as that applied to the excepted position. The Organization contends that under Rule 48 of the current Agreement, the Carrier in making the assignment on a basis of 306 days rather than 365, is required to increase the daily rate to produce the same annual compensation as a 365 day assignment. Rule 48 provides:

"Employees covered by groups (1) and (2), Rule 1, heretofore paid on a monthly, weekly or hourly basis, shall be paid on a daily basis. The conversion to a daily basis of monthly, weekly or hourly rates shall not operate to establish a rate of pay either more or less favorable than is now in effect."

It is the contention of the Carrier that the foregoing rule pertains only to the conversion of established positions to a daily rate of pay and has no relation to a newly created position. This would be true except for Rule 51 (a) which provides:

"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."

The record indicates that the excepted position and the one involved herein were identical in character and of similar kind or class within the meaning of the rule. The Carrier appears to have concurred in this view when it fixed the daily rate of pay of the position at the identical amount fixed for the excepted position. It therefore affords a basis for determining the correct rate of pay for the new position.

It must be noted, however, that the position which we have termed the excepted position is not wholly excepted from the current Agreement. It is excepted from the call, overtime and Sunday and holiday rules. Consequently, this position may be assigned on a 365 day basis without a contractual violation. The new position, however, is under the Agreement and the position not being one necessary to the continuous operation of the Carrier, it is properly assignable on a 306 day basis. If the excepted position were brought within the Agreement, it would be subject to conversion to a 306 day annual assignment at a rate of pay neither more or less favorable than the rate then in effect. We think the Claimant is entitled to the same rate the occupant of the excepted position would receive if he were brought within the Agreement. After applying the conversion rule, that daily rate with wage increases added would amount to \$6.97 per day.

It is urged that such a result would be unfair and inequitable in that File Clerk No. 2 would receive the same annual salary by working 59 days less than the occupant of the excepted position. While this is true, it results from the fact that the incumbent of the new position by being under the current Agreement is entitled to the benefits it confers. He receives the same rate that the excepted position would pay if it were not excluded from certain rules in the Agreement. It is a situation of which the Carrier can take advantage because of the non-applicability of certain rules of the Agreement to the excepted position. The Claimant is entitled to the same rate of pay which the identical kind and class of work outside the Agreement would produce if it were within the 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 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 the Agreement was violated as alleged.

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.