

Award No. 3194

Docket No. CL-3131

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 the proper daily rate of pay for positions titled Ticket Clerk, Los Angeles Union Passenger Terminal, as indicated below covering ticket clerk positions in effect as of November 27, 1942, shall be so established and all employes affected in or by this violation of agreement shall be compensated for the difference between rates of pay applied and proper rates retroactive to July 2, 1942.

Ticket Clerk Position No.	Assigned Hours	Daily Rate Applied	Proper Daily Rate
1101	7:00 a.m. to 3:00 p.m.	\$7.84	\$7.84
1103	6:30 a.m. to 2:30 p.m.	7.63	7.84
1105	3:00 p.m. to 11:00 p.m.	7.21	7.63
1107	4:00 p.m. to 12:00 mid.	7.21	7.63
1108	3:30 p.m. to 11:30 p.m.	7.21	7.63
1109	12:00 noon to 9:00 p.m.		
	Lunch 4:00 p.m. to 5:00 p.m.	7.21	7.84
1110	2:00 p.m. to 10:00 p.m.	7.21	7.63
1111	7:00 a.m. to 3:00 p.m.	7.21	7.84
1112	7:30 a.m. to 3:30 p.m.	7.21	7.84
1113	4:00 p.m. to 12:00 mid.	7.21	7.63

EMPLOYEES' STATEMENT OF FACTS: The facts in this case and upon which this claim rests concerns the assignment of more responsible ticket clerk duties to the positions in point, the rates of pay for which, as originally established, not contemplating the added duties and responsibilities and which fact was responsible for the establishment of the differentials in rates of pay which the Carrier continues to apply even though the reason for such differentials has now disappeared.

The differentials in the rate of pay for ticket clerk positions present rate \$7.21 (now \$7.93) per day, as against the rates \$7.63 (now \$8.35) and \$7.84 (now \$8.56) per day, came about as a result of assignment of less responsible ticket clerk duties to the positions carrying the rate of \$7.21 per day when such rates were established.

rule, the positions became ones with duties and responsibilities similar to positions No. 1101 and 1103, and, therefore, the rates should be adjusted accordingly." (Emphasis supplied.)

These quotations clearly emphasize the applicability of the doctrine of laches. It is admitted that the alleged changes in duty and responsibility became effective in early 1926, and the Employees base their claim on the contention that the positions then (early 1926) became new positions, yet they do not rely for support of that contention upon any agreement rule in effect in early 1926. They make no contention that any change in duty or responsibility occurred on November 27, 1942 or on July 2, 1942, when they ask that the increased rates be made effective, and they made no attempt to explain away the fact that the Employees accepted without protest or claim the change that was made in early 1926, and continued to work under the conditions then established for a period of more than sixteen years before any protest was made. Furthermore, they rest their claim on two agreements, the first of which did not become effective until more than three years after the alleged change was made.

As to the statements attached hereto as Carrier's Exhibit "B", which were submitted by five of the ticket clerks employed in the Carrier's ticket office at Los Angeles, it is significant to note that they are all in agreement that the duties and responsibilities of their positions are no different today than they were in 1926; they merely contend that there has been an increase in volume which, of course, does not change the character of a position. It is thus apparent that these positions are today the same positions which have existed since 1926, and which were in existence prior to the time that the inapplicable agreement rules, relied upon by the employees, became effective on December 1, 1929. Moreover, these employees have continued without protest to occupy their respective ticket clerk positions for more than sixteen years, and have accepted compensation based on the rates now complained of.

In conclusion, the Carrier asserts that the instant claim should be denied for the following reasons:

- (1) The Third Division may only construe and enforce Agreements and has no authority to establish rates of pay or change the long established rates of the positions involved in this dispute;
- (2) There is no Agreement rule or other authority which requires or even contemplates that rates which have, as in the instant dispute, existed for more than a quarter of a century, will be changed;
- (3) The rules relied upon by the Employees are not only inapplicable but were not in effect in 1926 when the re-arrangement of ticket sales, which is the basis of the Employees' claim, was effected at the Los Angeles Passenger Station;
- (4) Even if no other basis existed, laches, i. e., the inexcusable delay of the complainant employees in asserting their claim, alone should warrant its denial.

OPINION OF BOARD: This is a claim based on an alleged failure of the Carrier to properly compensate certain Ticket Clerks in the Los Angeles Union Passenger Terminal. In 1926, the Carrier maintained six ticket windows in the Santa Fe Station at Los Angeles, one of which was designated for the Sale of Interline and Pullman tickets and the other five for local tickets. The first trick Ticket Clerk on the Interline and Pullman ticket window was rated at \$8.56 (present rate) per day, and the second trick Ticket Clerk at \$8.35 (present rate) per day. The eight Ticket Clerks working on the local ticket windows were paid \$7.93 (present rate) per day. These differentials in pay have been maintained since the positions were established prior to World War I. It is asserted that as originally established, the Ticket Clerk handling Interline and Pullman tickets held the higher rated position while those handling local tickets received the lowest rate. It appears that in 1926, the Local Ticket Clerks commenced the handling of Interline and Pullman tickets to an extent which is in dispute in the record. It appears that the window designations were all made to read "Local, Interline and Pullman Tickets" in 1933.

In May 1939, the Santa Fe Ticket Office was moved into the Los Angeles Union Passenger Terminal where the work was handled in the same manner and the same differentials in pay were maintained. It is the contention of the Organization that as all of the Ticket Clerks are now performing subsequently the same work that they are entitled to be compensated at the same rates of pay by virtue of Sections 1, 3(a), 3(b) and 5 of the 1929 Agreement and the corresponding rules of the 1942 Agreement.

It is the contention of the Carrier that all Ticket Clerks are, and always have been required to be qualified to handle Local, Interline and Pullman tickets. In bulletining Ticket Clerk positions throughout the history providing the background for the present claim, the Carrier has consistently stated that bidders must be qualified to handle Local, Interline and Pullman tickets. The record shows that in 1926, all Ticket Clerks in the Los Angeles Office were handling some Interline and Pullman tickets. At what time the employes working the local ticket windows first performed the same work as the higher rated positions is not clear from the record. In view of other facts in the record, we do not feel that it is a material fact.

Since the lower rated Ticket Clerks first began to handle Interline and Pullman tickets, no complaint has been made of the rate differential until the present claim was made. For all these years, the Organization and the employes have treated the differentials in pay as being proper and have accepted the stated compensation without question. Two agreements have been negotiated since 1926 without a complaint being made. Wage increases have been applied without any question of improper basic rates being raised. For 16 years the parties have apparently concurred in a common belief that the wage differentials in the Ticket Clerk positions in the Carrier's Los Angeles Office were consistent with existing Agreements. The long acquiescence of the Organization and the Claimants in the assigned rates have the effect of estopping them from asserting that they do not comply with applicable Agreements. The parties by their conduct having in effect agreed that the rates were proper, they are just as binding upon the parties as if specifically incorporated in the written Agreement. This being true, the remedy, if one is required, is by negotiation because an Award of this Board eliminating the differentials by granting the maximum rate to all would be nothing more or less than the fixing of rates of pay without contractual support. This we are not empowered to do. Award 2218. The following Awards of this Division sustain the position we have herein assumed. Awards 3002, 2281 and 2137. No basis for an affirmative award exists.

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 the Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 1st day of May, 1946.