

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 COM-
PANY, ASHERTON & GULF RAILWAY COMPANY**

Guy A. Thompson, Trustee

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

(a) The position advertised in Bulletins No. 193, April 13, and 16, 1943, at Corpus Christi, Texas should be classified as Car Record Clerk, rate \$7.54 per day, plus subsequent wage increases, making a current rate of \$8.26. Also,

(b) Claim that the correct classification and rate of pay be applied retroactive to the date the position was created.

EMPLOYEES' STATEMENT OF FACTS: On April 13, 1943 the Carrier issued Bulletin No. 193 advertising a new position at Corpus Christi. The bulletin gave title as Line Desk Clerk, 306 day annual assignment and rate of \$6.45 per day. The duties assigned the position were to post the car record and handle interchange corrections.

On April 16, 1943 the carrier issued another bulletin, changing the title to Yard Clerk and the rate to \$5.90 per day. There was no change in the duties required.

In San Antonio, which is in the same seniority district, we have, among others, the following positions:

Title	Annual Assignment	Rate
Car Record Clerk	306	\$8.26
Interchange Clerk	306	8.26

The duties of the Car Record Clerk in San Antonio are "to post car records of in and outbound trains and make interchange reports."

The Interchange Clerk, as the title indicates, compiles interchange reports.

The duties assigned to the position here in dispute, as disclosed by bulletins advertising the position, are the same as those assigned to the Car Record Clerk and the Interchange Clerk at San Antonio.

POSITION OF EMPLOYEES: The employees quote the following rules from agreement that became effective November 1, 1940:

Carrier's Exhibit "I" is copy of a bulletin advertising a position of car record clerk at San Antonio. It will be noted that the "Brief Description of Duties" covering that position reads as follows:

"Interchange between the connecting lines, compile "2" report; per diem statement and post car records."

It will be noted that the duties assigned to the position of Car Record Clerk at San Antonio differ from those set forth in Bulletin No. 193 corrected, advertising position of yard clerks at Corpus Christi.

With respect to the provisions of Rule 51, paragraph (a) of the Clerks' Agreement, which the Employees contend supports their contention and claim; as the Carrier has previously shown, in addition to the newly established position of yard clerk at Corpus Christi performing work on the so-called "Jumbo" book, two of the other regular yard clerks at that point were also performing that same work. Carrier's Exhibits "E" to "H", inclusive, also show that the occupant of the newly established position of yard clerk at Corpus Christi did not perform any work not being performed by some of the occupants of the other regularly assigned yard clerk positions at that point with same rate of pay of \$5.90 per day. Therefore, it is clearly evident that in establishing the additional temporary position of yard clerk at Corpus Christi with rate of \$5.90 per day the Carrier did comply with Rule 51, paragraph (a), reading:

"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."

As a matter of fact, the above rule, rather than supporting the contention and claim of the Employees, supports the position of the Carrier in establishing rate of \$5.90 per day on the additional yard clerk position at Corpus Christi.

When consideration is given to the fact that:

1. The new or additional temporary position of yard clerk at Corpus performed no work not being performed by other regularly assigned positions of yard clerk at Corpus Christi;
2. The rate of \$5.90 per day established on the new or additional position of yard clerk at Corpus Christi was the same rate of pay established on four other positions of yard clerk at that point;
3. Rule 51, paragraph (a) provides that "The wages for new positions shall be in conformity with the wages of positions of similar kind or class in the seniority district where created";
4. No position of Car Record Clerk has ever been maintained at Corpus Christi.
5. The duties of the new position of yard clerk established at Corpus Christi are not the same as the duties assigned to position of car record clerk at San Antonio;
6. The provisions of Rule 51, paragraph (a) relied upon by the Employees actually supports the position of the Carrier;

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

OPINION OF BOARD: In April 1943 there were four Yard Clerks, rated \$5.90 per day, assigned 365 days annually at Corpus Christi, Texas. On April 16, 1943, the Carrier bulletined an additional position of Yard Clerk at \$5.90 per day on a 306 day annual assignment. The bulletin summarized the duties of the position as follows:

"Handle Jumbo record book and exceptions from SP connection cars interchanged."

The Organization contends that the duties are similar in kind and class to those of Car Record Clerk, rate \$7.54, located in San Antonio within the same seniority district. The position was discontinued on April 26, 1945. The claim is that the rate of pay of a Car Record Clerk be retroactively applied during the period the position was in existence.

The Carrier argues that the duties of the new position were similar to those of the four Yard Clerks at Corpus Christi. The Carrier further asserts that Car Record Clerks have been employed only in the large terminals and that Corpus Christi is a small terminal that does not warrant the establishment of such a position.

The record discloses that prior to the war emergency, the Yard Office force at Corpus Christi consisted of only one or two clerks. The Government then constructed a large naval base at that point which necessitated the building of a new yard and the enlargement of the office forces. It was the result of this condition that Carrier found it necessary to add the position in question to handle the Jumbo record book and the exceptions to cars interchanged with the Southern Pacific Railroad. The record shows that prior to the assignment of the position in question, the four Yard Clerks performed work in handling the Jumbo record book. There is no evidence that they performed any interchange work except the statement of the Carrier that the interchange work performed by them was too negligible to mention in reciting the duties of the four Yard Clerks. It is evident, however, that the Carrier did not consider the positions identical in that it assigned the position in question on a 306 day annual basis although the four Yard Clerks were assigned on a 365 day annual basis. This, of course, makes the monthly pay of the position in question much less than that of the four Yard Clerks.

The duties of the Car Record Clerk at San Antonio are described in the bulletin issued on that position as follows:

"Interchange between connecting lines, compile '2' report; Per diem statement and post car records."

It is evident to us that the position here involved was assigned to handle Jumbo record book work and specified interchange work. These are duties also specifically assigned to a Car Record Clerk in San Antonio. We must assume from the form of the assignment of the new position that the Carrier intended the occupant of the new position to devote his time to Jumbo record book work and the interchange work designated, possibly for the purpose of relieving the four Yard Clerks of these duties. We agree with the Organization that the manner of bulletining the new position indicates that it was more similar to the position of Car Record Clerk at San Antonio than it was to the positions of the four Yard Clerks at Corpus Christi. We think the manner of bulletining indicates that the Carrier itself did not consider the position that of a Yard Clerk; first, because it was originally bulletined as a Line Desk Clerk, and second, because in bulletining it as a Yard Clerk, the annual assignment and monthly calculated rate of pay was altogether different than that of the four Yard Clerks in the Corpus Christi Yard Office. We think an affirmative award is required covering the period from April 16, 1943 to April 26, 1945.

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 Agreement was violated as alleged.

AWARD

Claim sustained as limited by the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 2nd day of August, 1946.