Award No. 3420

Docket No. CL-3412

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Bruce Blake, Referee

PARTIES TO DISPUTE:

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

GULF COAST LINES; INTERNATIONAL-GREAT NORTHERN RAILROAD CO.; THE ST. LOUIS, BROWNSVILLE & MEXICO RAILWAY CO.; THE BEAUMONT, SOUR LAKE & WESTERN RAILWAY CO.; SAN ANTONIO, UVALDE & GULF RAILROAD CO.; THE ORANGE & NORTHWESTERN RAILROAD CO.; IBERIA, ST. MARY & EASTERN RAILROAD CO.; SAN BENITO & RIO GRANDE VALLEY RAILWAY CO.; NEW ORLEANS, TEXAS & MEXICO RAILWAY CO.; NEW IBERIA & NORTHERN RAILROAD CO.; SAN ANTONIO SOUTHERN RAILWAY CO.; HOUSTON & BRAZOS VALLEY RAILWAY CO.; HOUSTON NORTH SHORE RAILWAY CO.; ASHERTON & GULF RAILWAY CO.; RIO GRANDE CITY RAILWAY CO.; ASPHALT BELT RAILWAY CO.; SUGARLAND RAILWAY CO.

(Guy A. Thompson, Trustee)

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

(a) The Carrier violated the Clerks' Agreement at San Antonio, Texas, beginning September 24, 1945, when it abolished position of Utility Clerk No. 4, rate $9.85 per day, and assigned the duties thereof to Utility Clerks Nos. 1, 2 and 3, with rates of $8.25 per day. Also,

(b) Claim that the Carrier be required to increase the rates of Utility Clerks Nos. 1, 2 and 3 from $8.25 per day to $9.85 per day, effective September 25, 1945, plus subsequent wage increase. And,

(c) Claim that all employes involved in or affected by the Agreement violation be compensated for all losses sustained.

EMPLOYES' STATEMENT OF FACTS: On October 18, 1944, Carrier established and bulletined position of Utility Clerk No. 4 in the San Antonio Yard Office. The bulletin described the duties as—

> "Post car records, make 6793-T City and Passenger Yard; check SAU&G Outbound trains and make turnover check for Yardmaster."

tion created to do the work performed by the discontinued position; together with the "Opinion" and "Findings" of the Board as expressed in Awards No. 974, 2352, and 2353, it is clearly evident that the contention and claim of the Employes in the case under consideration is without basis.

Therefore, it is the position of the Carrier that the contention of the Employes be dismissed and the accompanying claim accordingly denied.

OPINION OF BOARD: Under date of October 18, 1944, the Carrier bulletined a temporary position of "Utility Clerk No. 4—Yard" at San Antonio. The position carried an assignment of 365 days at a pay rate of $8.26 per day. In fixing the rate of pay the Carrier complied with the provisions of Rule 51 of the controlling Agreement, which provides:

> "(a) 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."

For, at the time, there were three positions of Utility Clerk at San Antonio, each of which carried a pay rate of $8.26 per day. No. 1 was a 365 day position. No. 2 and No. 3 were 306 day positions.

On November 29, 1944, the lately created position (No. 4) was changed by the Carrier from a 365-day position to a 306-day position. This change was made pursuant to an agreement entered into by the Organization and the Carrier as follows:

"October 13, 1940.

Mr. J. L. Dyer, Gen. Chairman
B. of R. C.,
Houston, Texas.

Dear Sir:

With reference to agreement regarding 365 day assigned positions not necessary to the continuous operation of the Carrier.

It is agreed that all 365 day assignments, not necessary to the continuous operation of the carrier, will be reduced to 306 day assignment and the daily rate will be adjusted so that the earnings will be the same as received for 365 days.

This understanding shall remain in effect until changed in accordance with the terminating rule of the Agreement.

Yours truly,

(Signed) W. C. Choate,
General Manager.

ACCEPTED:
(Signed) J. L. Dyer,
Gen. Chairman, BofRC.

By bulletin, effective September 24, 1945, Position No. 4 was abolished and the work, appertaining to it, was assigned to positions 1, 2 and 3. The claim of the Organization is that the rate of pay of positions 1, 2 and 3 be increased from $8.26 per day to $9.85 per day. The claim is based on Rules 50 and 52 of the current Agreement which, so far as pertinent, provide:

> Rule 50 (a). "Employes temporarily or permanently assigned to higher rated positions or work shall receive the higher rates for the full day while occupying such position or performing such work; * * *"
>
> Rule 52 (a). "Established positions will not be discontinued and new ones created under the same or different title covering relatively the same class or grade of work, which will have the effect of reducing the rate of pay or evading the application of these rules."

These rules have relevance only on the assumption that the letter of October 13, 1940 was designed to affect the wage structure set up by the controlling Agreement. Such assumption is warranted neither by the terms nor the intent of the letter Agreement. It, of course, affects the daily rate of pay of the occupants of positions reduced from 365 to 306 days but that is only incidental to its main objective: the reduction of 365 day positions, unnecessary to continuing operation, to 306 day positions and, at the same time, protect the occupants of such positions in their annual earnings. To accord any meaning to the Agreement beyond this would extend its terms and distort its purpose.

The Organization has cited Awards Nos. 1614, 1627, 1846, 2008, 2239, 2781 in support of the claim now presented. Those Awards involve claims made by or on behalf of occupants of positions, unnecessary to continuous operation, which had been, or should have been, reduced from 365 day to 306 day positions. The decisions go no further than to hold that the occupant shall receive what he would have received had the position not been reduced from 365 to 306 days. Certainly they are not authority for holding that the Agreement was in any way designed to disturb the rates of pay of other positions. We do not think that Rules 50(a) and 52(a) have any application to the issue presented by this record.

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 there was no violation of the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 29th day of January, 1947.