

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

James M. Douglas, 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 of the Brotherhood that:

(1) The correct rate of pay for Position No. 105, Assistant Timekeeper, Superintendent's Office, Las Vegas, New Mexico, is \$7.88 per day instead of \$7.67 per day; and,

(2) Said rate shall be so adjusted with appropriate adjustment in wages paid to H. F. Barnes and/or employees occupying said position retroactive to April 21, 1944.

(3) The correct rate of pay for Position No. 90, Assistant Timekeeper, Superintendent's Office, Las Vegas, New Mexico, is \$7.88 per day instead of \$7.67 per day; and,

(4) Said rate shall be so adjusted with appropriate adjustment in wages paid to M. H. Tollett and/or employees occupying said position, retroactive to July 21, 1944.

EMPLOYEES' STATEMENT OF FACTS: During the period May 1932 to May 8, 1939, the only position of Timekeeper in the Division Office at Las Vegas, New Mexico, was that of Head Timekeeper. As of May 8, 1939 due to certain timekeeping work being transferred from the Central Timekeeping Bureau to the Division Office an Assistant Timekeeper position was established.

Conferences regarding transfer of his work and rate of pay for same were held with Assistant General Auditor, Mr. W. Hunt and agreement reached. Mr. Hunt wrote the General Chairman and attached a bulletin stating how the transfer would be made. The first paragraph of this bulletin reading as follows:

"Effective May 1, 1939 there will be transferred to Superintendent's offices the work of posting timebooks for trainmen, enginemen and yardmen. The positions in this office to be discontinued as result of this transfer of work, are listed on attached exhibit "A". The positions to be established in Superintendent's offices are listed in Exhibit "B", attached." (Emphasis supplied.) Line six of the Attached Exhibit "B" reads as follows:

desires to point out that Section 3-b of the October 1, 1942 Agreement (like wise quoted in the Carrier's Statement of Facts) is completely foreign to any of the principles involved in the instant case. It covers only Class 3 employees, none of whom is involved in the instant dispute.

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

(1) In the absence of a position of a similar kind and class on the seniority district, the rate of pay established by the Carrier for Position No. 105 is proper and the Third Division, National Railroad Adjustment Board has no authority to establish a different rate.

(2) Position No. 90 was a new position, the rate of pay of which was properly established in conformity with the requirements of Article XI, Section 4 of the current Clerks' Agreement effective October 1, 1942.

(3) The request of the Employees for a rate of pay for Position 90 in excess of that resulting through the application of the new position rule constitutes a request for a straight increase in pay which the National Railroad Adjustment Board, Third Division, is without authority to grant.

(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 claim seeks increased rating for two new positions of assistant timekeeper.

In 1939 Carrier transferred certain timekeeping work from a central timekeeping bureau to the division office at Las Vegas, New Mexico, and created there a new position of assistant timekeeper, No. 100, at a rate agreed to by the parties.

In September, 1942 it created another new position of assistant timekeeper, No. 105, at the same office, and assigned to it the same rate which had been previously paid before the position was abolished upon the formation of the central bureau. However, this rate was less than the one assigned to position No. 100.

In July, 1944 it created a third new position, No. 90, with the same duties and the same rate as position No. 105. Thus for the purposes of this case we need consider only position No. 105 as the same decision will apply to position No. 90.

Under the rules, if position No. 105 was "of similar kind or class" as position No. 100 it should have been assigned the same rate of pay, not a lower one. The question to be decided, therefore, is whether the two positions are of similar kind or class.

It appears from the record that the chief difference in the duties of the two positions is that No. 100 posts enginemen's time while No. 105 posts trainmen's and yardmen's time. Carrier asserts the duties of No. 100 are more exacting and require more responsibility, initiative and judgment because each class of engine has its own rate for each class of service and each territory. We do not believe such difference is sufficient to cause the positions to fall into different kinds or classes.

The nature of the duties and responsibilities of a position are a necessary consideration in determining its kind or class. Even so, the duties of two positions do not have to be identical in detail in order for the positions to be of similar kind or class. The duties need only be of a similar kind or belong to similar classes.

A rule requiring the same rates for positions of similar kind or class is a much broader rule than one which refers to positions of "similar work and responsibilities".

It seems clear that positions No. 100 and No. 105 are of similar kind or class. In fact this was indicated by Carrier when it used the same description for the respective duties of both positions in bulletining them.

This claim was filed on August 1, 1944, some 23 months after position No. 105 was created. But this fact does not affect petitioner's right to relief because we find no rule in the agreement limiting the time in which a claim must be made, and there is nothing to show Carrier has been harmed in any way by the delay.

The claim must be sustained.

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 Carrier violated the agreements as contended by petitioner.

AWARD

Claim (1, 2, 3 and 4) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 4th day of March, 1947.