

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**

GULF, COLORADO AND SANTA FE RAILWAY COMPANY

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

(a) The rules of the Clerks' Agreement were violated when on August 3, 1943, General Clerk Position No. 16 was established in office of Superintendent, Fort Worth, Texas at a rate of \$7.44 (now \$8.16) per day; and

(b) The correct rate of pay for Position No. 16, General Clerk, is \$8.37 (now \$9.09) per day instead of \$7.44 (now \$8.16) per day; and,

(c) Said rate be so adjusted and that appropriate adjustment in wages paid W. H. Green and/or employees occupying Position No. 16 shall now be made retroactive to January 1, 1944; and,

(d) That Position No. 16 be re-bulletined showing thereon brief description of duties assigned and proper rate of pay.

EMPLOYEES' STATEMENT OF FACTS: Effective August 3, 1943 a new position was established in the office of Superintendent, Fort Worth, Texas, titled General Clerk, Position No. 16. Bulletin No. 9 advertising the position reads as follows:

"There is a vacancy in the Superintendent's office at Fort Worth, Texas for a General Clerk, Position No. 16, assigned hours 8:00 A. M. to 4:30 P. M. with 30 minutes off for lunch daily except Sundays and Holidays, rate \$7.44 per day, to those who have completed 18 or more months previous clerical experience, this being a Class 1 position.

"The duties of this position will be assisting any or all desks in the office wherever needed.

"Written applications for this position will be accepted in this office by the undersigned up to and including Sunday, August 8, 1943."

As of August 3, 1943 other schedule positions in the office were:

In their handling with the Carrier, the Employees relied upon two Third Division Awards in support of their claim, viz. 2262 and 2270. A careful analysis of these awards will, however, show that the rule and circumstances in Award 2262 and the circumstances in Award 2270 definitely distinguish them from this case, and they lend no support to the instant claim.

Award 2262: The dispute there was based upon a rule different from the governing rule in our agreement, in that when a lower rated employee was required to perform any work usually performed by a higher rated employee, he was entitled to the higher rate for the full day on which he performed such work. Our rule does not so require but, on the contrary, is based upon being assigned to the position, occupying it and fulfilling the duties and responsibilities of it. Moreover, the dispute there apparently involved an incident in which a certain class of work was entirely removed from a position paying a higher rate and was regularly assigned to an employee paid a lower rate. That rule and those conditions do not exist in the instant dispute.

Award No. 2270: This award covers a dispute in which the governing rule was the same as ours but the circumstances were entirely different. In the dispute there, a lower rated employee, on a different shift, was required to perform the duties of a higher rated employee after the latter had been released for the day, and the claimant there, while so performing the work, was found to have fulfilled the duties and responsibilities of the position during the time he occupied it; the following paragraph from the Opinion of the Board contains the essential differences between that case and this one:

"We are of the opinion that under the facts of this case the claimant could be said to have been temporarily assigned to a higher rated position and should have received the higher rate. While doing this work, he was fulfilling 'the duties and responsibilities of the position' of bill clerk. He was not 'assisting the higher rated employee due to a temporary increase in the volume of work.' This was work which came in after the bill clerk had gone off duty." (Emphasis supplied.)

Therefore, these Awards do not lend support to the instant claim.

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

- (1) The instant claim is not in any manner supported by the governing rules of the current Clerks' Agreement.
- (2) 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 16, General Clerk is proper and the Third Division, National Railroad Adjustment Board has no authority to establish a different rate.

OPINION OF BOARD: The real question in this dispute appears to be whether the newly established position of General Clerk has "similar duties and responsibilities" to the position of Assistant Timekeeper, in the same office, and is therefore entitled to the same rate. The determination of this question will necessarily affect the disposition of the other controverted issues.

It appears from the record that the parties agree when the claim was progressed on the property the rates under discussion were \$7.65 (now \$8.37) for the Assistant Timekeeper at the time the new position of General Clerk was established; and the rate assigned such new position was \$7.44 (now \$8.16). The "now" rates were those effective prior to the increase of January 1, 1946.

If the position of General Clerk had "similar duties and responsibilities" as that of Assistant Timekeeper it should have been assigned the same rate, as required by the Agreement.

The duties assigned to the new position were "to assist any and all desks wherever needed".

It appears from the record that the single duty and responsibility imposed on the General Clerk which was the same duty regularly performed by the Assistant Timekeeper was that of posting time of train and engine men. Petitioner asserts Claimant spent 61% of his time posting time; Carrier concedes 50%.

However, this does not make the two positions similar in duties and responsibilities because the Assistant Timekeeper had a number of other duties of greater responsibility. He was also required, in brief, to check train, engine and yard men's trip tickets against train sheets and yard work reports, and to compute mileage and overtime allowances and allowances earned under the rules of various working agreements, such as final terminal delay and the like. This required an up to date knowledge of the five working agreements covering enginemen, firemen, conductors, trainmen and yardmen, and the exercise of judgment and responsibility in applying the rules.

After computations are completed and the various amounts ascertained, the final figures are posted in the time books.

The duty of posting is somewhat routine clerical work and not a duty either similar to computing allowances or of similar responsibility.

This Board has no jurisdiction to establish a rate for the new position of General Clerk. Under the circumstances here that should be done by negotiation and agreement of the parties.

For want of jurisdiction this claim should be dismissed.

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 does not have jurisdiction over the subject matter of the dispute involved herein; and

That the claim should be dismissed.

AWARD

Claim dismissed for want of jurisdiction.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 7th day of April, 1947.