

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**

MISSOURI PACIFIC RAILROAD COMPANY

(Guy A. Thompson, Trustee)

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees on the Missouri Pacific Railroad that the Carrier violated the Clerks' Agreement:

1. When on December 1, 1945, or within the three day period thereafter, as provided in Rule 8 (a), it changed the rate of Chief Timekeeper at Seventh Street Freight Station, St. Louis Terminals, from a rate of \$8.31 per day to \$8.81 per day, and failed and refused and continued to refuse to bulletin the position as a "new position" as contemplated by the provisions of Rule 8 and Rule 10 (b);

2. That the Carrier shall bulletin for bids to employees listed on the Station and Yards Group 1 Seniority Roster, St. Louis Terminals, the position of Chief Timekeeper at Seventh Street Freight Station and thereby give effect to a proper application of the Agreement.

STATEMENT OF FACTS: The position of Chief Timekeeper at Seventh Street Station, St. Louis Terminals, is one subject to all of the rules of the existing Clerk's Agreement and the rate of pay of the position was changed pursuant to provisions of various wage settlements between the Organization representing the employees on the property and the Carrier as follows:

Effective November 1, 1928	Per wage settlement reached in mediation case C-337, the rate was changed from \$6.15 per day as of October 31, 1928 to a rate of \$6.39 per day;
Effective August 1, 1937	Per wage settlement reached in mediation case A-395, the rate was changed from \$6.39 per day of July 31, 1937 to that of \$6.79 per day;
Effective September 1, 1941	Per mediation wage settlement dated at Chicago, Illinois, December 15, 1941, the rate was changed from \$6.79 per day as of August 31, 1941 to a rate of \$7.51 a day and from \$7.51 per day as of November 30, 1941 to a rate of \$7.59 per day effective December 1, 1941;

In support of the Carrier's position, we refer your Honorable Board to Webster's Twentieth Century Dictionary, Unabridged, where the word "negotiate" is defined as

"... to treat with another in bargaining or trade. . . ."

In the same dictionary we find the definition of "negotiation" as

"... to carry on business. . . ."

We also find in the same dictionary the definition of "negotiator"—

"One who negotiates; one who treats with others, either as principle or agent. . . ." (Underscoring added).

We respectfully submit that Mr. Siegel, the occupant of the position of Chief Timekeeper at Seventh Street, St. Louis, having failed in his efforts to get the representatives of the organization charged with the duty of representing him to progress his request for him, was at liberty to proceed on his own behalf, and in doing so, and in succeeding, did not violate or thereby cause the Carrier to violate any of the obligations of the Carrier under the working agreement.

To say that one who has occupied a position for a period of more than thirty-one years succeeds in obtaining an increase of 50c per day in the rate of his position has thereby brought about the creation of a new position which becomes subject to bulletin, which throws such a position open to other qualified applicants, seems, to the Carrier, unreasonable, unjustified, if not ridiculous, and certainly it is outside of the requirements of any rule.

In conclusion, the Carrier holds and believes that it has supported its holding that the increase of 50c per day in the rate of the position of Chief Timekeeper at Seventh Street, St. Louis, was the result of its negotiations, as contemplated by Rule 10 (b) of the working agreement, and that, therefore, the position did not become a new position and was not subject to bulletin. Having shown the foregoing, Carrier respectfully requests that the complaint and claim of the Employees be denied.

OPINION OF BOARD: Effective December 1, 1945, the Carrier increased the rate of pay for the Chief Timekeeper position at the Seventh Street Freight Station, St. Louis Terminal, from \$8.31 to \$8.81 per day. The increase was made at the instigation of the occupant of the position and not by negotiation with the Organization. The position was not bulletined as a new position which the Organization contends is required by the terms of the current Agreement.

The decision turns upon the interpretation to be given to Rule 10 (b), which says:

"Except when changes in rates result from negotiations for adjustment, the changing of a rate of a specified position for a particular reason shall constitute a new position subject to bulletin. In instances where adjustments are made as result of negotiations and grievance the result shall not constitute a new position subject to bulletin unless otherwise agreed to."

The Carrier asserts that it had a right to negotiate directly with the occupant of the position relative to an increase in the rate of pay for the position. The Organization agrees with this statement but insists that where an increase is granted by this method that the position must be thereafter bulletined as a new position. Whether the position must be bulletined after such an increase is made constitutes the crux of the dispute.

The rights which an employe may personally assert in negotiating, interpreting and enforcing the provisions of collective agreements made pursuant to the Railway Labor Act have not been clearly and definitely established. An examination of *The Order of Railway Telegraphers vs. Railway Express Agency, Inc.*, U. S. Supreme Court No. 343, October Term, 1943, the two opinions in *Elgin, Joliet and Eastern Railway Company vs. Burley*, U. S. Supreme Court No. 160, October Term, 1944, and the Awards

of this Board, leave much to be desired in determining the rights which employes may personally assert under collective agreements made pursuant to the Act. We do think, however, that matters of contract negotiation are required to be handled by the Organization with the Carrier, and that an employe may not personally negotiate directly with the Carrier to the prejudice of the Organization or any employe whose position is within the scope of the Agreement. On this principle an employe may negotiate with the Carrier to raise the rate of his position, but not lower it. But in so doing, both the carrier and the employe must abide by all provisions of the applicable agreement that bears on the situation. Clearly, the negotiation of an increased rate of a position by the occupant thereof, is a matter of contract negotiation which falls squarely within this rule.

We think Rule 10 (b) means that if the rate of a position under the Agreement is negotiated and adjusted, either upward or downward, by the Organization, it need not be bulletined as a new position. The same rule applies if the adjustment occurs as the result of the handling of a grievance in the manner provided by the Railway Labor Act.

The Carrier urges that the phrase "the changing of a rate of a specified position for a particular reason" affords a basis for its position in that the position need not be bulletined after the increase was granted because it was not raised for a particular reason. We cannot agree to this interpretation. We think the words have the effect of providing that when the change in rate is special to a particular position, and not applicable to all others in the class or to employes generally within the Agreement, the position must be bulletined as a new position, if, as we have heretofore said, that change did not result from negotiation by the Organization or a decision in a grievance case. It will be conclusively presumed that a particular reason existed for raising the rate of a single specified position; otherwise the increase would result from no reason at all, a situation with some theoretical but no practical force. Any other interpretation would seriously impair the effectiveness of the collective Agreement.

We agree with the Organization therefore that when the rate of the Chief Timekeeper's position was increased at the instigation of the occupant directly with the Carrier, and not by negotiation between the Organization and the Carrier or as the result of an interpretation growing out of grievance handling under the Act, it must be treated as a new position and bulletined as such.

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 the Agreement was violated by the Carrier as charged.

AWARD

Claim (1 and 2) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary

Dated at Chicago, Illinois, this 11th day of April, 1947.