

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
RR CO.; THE ST. LOUIS, BROWNSVILLE & MEXICO RY.
CO.; THE BEAUMONT, SOUR LAKE & WESTERN RY. CO.;
SAN ANTONIO, UVALDE & GULF RR CO.; THE ORANGE
& NORTHWESTERN RR CO.; IBERIA, ST. MARY & EAST-
ERN RR CO.; SAN BENITO & RIO GRANDE VALLEY RY.
CO.; NEW ORLEANS, TEXAS & MEXICO RY. CO.; NEW
IBERIA & NORTHERN RR CO.; SAN ANTONIO SOUTHERN
RY. CO.; HOUSTON & BRAZOS VALLEY RY. CO.;
HOUSTON NORTH SHORE RY. CO.; ASHERTON & GULF
RY. CO.; RIO GRANDE CITY RY. CO.; ASPHALT BELT RY.
CO.; SUGARLAND RY. CO.
(Guy A. Thompson, Trustee)**

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

(a) The Carrier violated the Clerk's Agreement at Houston, Texas, on October 31, 1945, when it abolished position of File Clerk, rate \$7.01 per day, and assigned the remaining duties to another File Clerk with rate of \$6.78 per day. Also.

(b) Claim that the Carrier be required to increase the rate of pay of the remaining File Clerk from \$6.78 to \$7.01 per day effective November 1, 1945, plus subsequent general wage increases.

EMPLOYES' STATEMENT OF FACTS: On October 31, 1945, and prior thereto there were two positions in the Mechanical Superintendent's office designated as File Clerks with rates of \$7.01 and \$6.78 per day.

On October 29, 1945, the Mechanical Superintendent issued a bulletin advising that position of File Clerk, rate \$7.01 per day, would be abolished at close of day October 31, 1945, and that the remaining duties would be assigned to the other File Clerk with rate of \$6.78 per day, with the result that since that time the \$6.78 per day File Clerk has been required to perform work for which there is an agreed upon rate of \$7.01 per day.

POSITION OF EMPLOYES: The fundamental facts in this case cannot be successfully denied. The Carrier abolished a position paying \$7.01 per day and assigned the work to a position paying only \$6.78 per day.

The above Award No. 2352 denied the Employees' claim.

Award No. 2353 covers a case similar to the case referred to above covered by Award No. 2352. The following is quoted from "Opinion of Board" in Award No. 2353, which also denied the Employees' claim:

"The Carrier in the exercise of its managerial prerogative could change its plan for assigning its motive power. And in so doing, it could properly discontinue any position which had no duties remaining to be performed. And we think also that the Carrier could properly assign additional duties to others within the Clerks' Agreement. It may not, however, assign work within the scope of the agreement to employees in excepted positions. It is clear from the record, in applying these rules to the case before us, that the Carrier did not violate its contract with the Clerks. It is not pointed out by the Organization where an excepted employee is doing any specific work that Derr was doing when in the position of Power Distributor. General assertions unsupported by facts are not sufficient to sustain an affirmative award."

When consideration is given to all the facts and circumstances involved in the case under consideration, specifically the fact that Rules 50 and 52, which the Employees allege the Carrier has violated, are not involved and accordingly have not been violated, together with the "Opinion" and "Findings" of the Board expressed in Awards Nos. 974, 2352 and 2353, it is clearly evident that the contention and claim of the Employees in the case under consideration is without basis. Therefore, it is the position of the Carrier that the contention of the Employees be dismissed and the accompanying claim accordingly denied.

OPINION OF BOARD: On October 31, 1945, there were two File Clerks working at Houston, Texas. On that date the Carrier abolished one position, rate \$7.01 per day, and assigned the remaining duties to the other File Clerk position, rate \$6.78 per day. The Organization contends the assignment of the remaining duties of the position rated at \$7.01 per day to the position rated \$6.78 per day requires that the rate of the latter be increased to that of the former. The Organization cites the following rules in support of its contention:

"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." Rule 52(a), current Agreement.

"Employees 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; employees temporarily assigned to lower rated positions or work shall not have their rates reduced." Rule 50(a), current Agreement.

The history of the two positions here involved is substantially as follows: Prior to April, 1932, there were two file clerks in the office of the Mechanical Superintendent at Houston, one assigned seven days per week at \$4.86 per day and the other assigned seven days per week at \$4.20 per day. In April, 1932, the position rated at \$4.20 per day was discontinued and until May 1, 1943, only one file clerk was employed. As a result of general wage increases, the rate of the \$4.86 position was \$6.78 per day, seven days per week, as of December, 1943. Effective May 1, 1943, the second file clerk position was reestablished as a temporary position and assigned to work six days per week. As of December, 1943, the rate of this position was \$7.01 per day. The original basic rate of the position was \$4.20 per day with a seven day per week assignment. The rate of \$7.01 per day was the result of subsequent general wage increases and the application of a letter agreement of October 13, 1940, wherein it was agreed that positions not necessary to the

continuous operation of the Carrier should be reduced to a 306-day annual assignment without loss of annual earnings. The second position not being necessary to the continuous operation of the Carrier, the daily rate was correctly calculated on a 306-day annual basis at \$7.01. The first position, being necessary to the continuous operation of the Carrier, was assigned on a 365-day annual basis of \$6.78 per day. Under these rates the first position would earn \$2,474.70 annually, and the second position would earn \$2,145.06 during the same period of time. It will be observed, therefore, that while the second position appears to be the higher rated position when the daily rate alone is considered, this is an anomaly brought about by the application of the letter agreement and not because of any higher rated work being performed on the position.

We are of the opinion that when the differential is brought about solely by the application. This was recently so held by this Division in Award 3420 and we adhere to the reasoning of that award. This being true, there was no assignment of higher rated work to the File Clerk position within the meaning of the Agreement as the Organization has charged in the present claim.

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 not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary

Dated at Chicago, Illinois, this 22nd day of May, 1947.