

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
RAILROAD CO.; THE ST. LOUIS, BROWNSVILLE AND MEXICO
RY. CO.; THE BEAUMONT, SOUR LAKE AND WESTERN RY.
CO.; SAN ANTONIO, UVALDE & GULF RAILROAD CO.;
THE ORANGE AND NORTHWESTERN RAILROAD CO.; IBERIA,
ST. MARY AND EASTERN RAILROAD CO.; SAN BENITO AND
RIO GRANDE VALLEY RY. CO.; NEW ORLEANS, TEXAS AND
MEXICO RAILWAY CO.; NEW IBERIA AND NORTHERN RAIL-
ROAD CO.; SAN ANTONIO SOUTHERN RY. CO.; HOUSTON
AND BRAZOS VALLEY RAILWAY CO.; HOUSTON NORTH
SHORE RAILWAY CO.; ASHERTON & GULF RAILWAY CO.;
RIO GRANDE CITY RY. 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 Clerk's Agreement at Kingsville, Texas, in November, 1945, when it failed to bulletin position of Utility Clerk when the rate was increased from \$8.02 to \$9.99 per day effective November 26, 1945. Also,

(b) Claim that Mrs. Ione Laws be paid the difference between Assistant Timekeeper's rate of \$7.92 and Utility Clerk's rate of \$9.99 for the period November 26, 1945 to February 7, 1946, both dates inclusive.

EMPLOYES' STATEMENT OF FACTS: On November 26, 1945 Division Accountant Mr. Prejean was instructed to devote his entire time to Completion Report work and to assign all of his other duties to Mrs. Yerrick, Utility Clerk.

The Division Accountant's work that was assigned to the Utility Clerk had an agreed upon rate of \$9.99 per day, whereas the Utility Clerk rate was only \$8.02 per day.

1. The application of Rule 50 under the circumstances existing in this case does not change the rate of a position as contemplated by Rule 24; that the occupant of a position is merely temporarily paid a higher rate by reason of performing work properly belonging on a higher rated position, but not because of any change in the work regularly assigned to his or her position;

2. The duties regularly assigned to the position of Utility Clerk were not changed, therefore there was no occasion or justification for increasing the rate of that position, and the rate of the position was not in fact increased;

3. The Employees have not previously contended that application of Rule 50 under the circumstances existing in this case constituted a "new position" under the provisions of Rule 24 thereby necessitating the bulletining of the "new position" in accordance with Rule 9 (a);

4. Positions have not previously been bulletined under the circumstances existing in this case;

5. The cases cited by the Carrier where the provisions of Rule 50 were applied but no contention made by, nor request received from the Employees that the position occupied by the employee receiving the benefits of the application of Rule 50 should be bulletined as a "new position";

6. The claim presented in favor of Mrs. Ione Laws, based on the assumption that had the position of Utility Clerk been bulletined she would have been assigned thereto, is in fact hypothetical and entirely void of support by the record;

it is clearly evident that the contention of the Employees should be dismissed and the claim accordingly denied.

OPINION OF BOARD: From November 28, 1945, to February 7, 1946, the Division Accountant, rate \$9.99 per day, in the Superintendent's Office at Kingsville, Texas, was instructed to utilize all of his time in the computation of completion reports. During the same period the Utility Clerk assumed some of the work of the Division Accountant in addition to her own duties. Subsequently, the General Chairman filed a claim on behalf of the Utility Clerk for the rate (\$9.99) of the Division Accountant's position on account of the Utility Clerk performing the higher rated work. After an appeal to the Assistant General Manager, the Carrier paid the claim. It is the contention of this Claimant, Ione Laws, that she was a clerk senior to the Utility Clerk and that she was entitled to perform the work.

The claim is founded on the assertion that by paying the Utility Clerk the higher rate of the Division Accountant's position, the rate of the Utility Clerk was increased and, this constituting a new position under the rules, it should have been bulletined and assigned to the senior bidder. Claimant being senior to the Utility Clerk claims she would have been entitled to the work if the Carrier had properly bulletined the position and asks that she be compensated for her wage loss resulting therefrom.

We think there was a violation of the Agreement when the Carrier assigned Division Accountant's work to the Utility Clerk without compensating her at the rate of the higher rated position. The General Chairman in progressing the claim of the Utility Clerk, asserted it as a violation of Rule 50 (a), current Agreement, which provides:

"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."

The Carrier paid the rate of the higher rated position to the Utility Clerk in accordance with the demands of the Organization. This constitutes a complete settlement for the violation of the rule.

The Organization contends that the Carrier increased the rate of pay of the Utility Clerk by settling the claim and thereby violated Rule 24, current Agreement, which provides:

"Except when changes in rates result from negotiations for adjustments of a general character, the changing of a rate of a specified position for a particular reason shall constitute a new position."

We are of the opinion that the Carrier did not change the rate of pay of the Utility Clerk. It remained as before. For violating the Agreement in using the Utility Clerk in higher rated work, the Carrier paid the penalty prescribed by the Agreement. The payment of this higher rate as a penalty cannot be construed as changing the rate of the position within the meaning of Rule 24, so as to require it to be bulletined as a new position. No basis for an affirmative award exists.

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 as charged.

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.