

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Joseph L. Miller, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES**

**GULF COAST LINES; INTERNATIONAL-GREAT NORTH-
ERN RAILROAD COMPANY; THE ST. LOUIS, BROWNS-
VILLE AND MEXICO RAILWAY COMPANY; THE BEAU-
MONT, SOUR LAKE AND WESTERN RAILWAY COMPANY;
SAN ANTONIO, UVALDE AND GULF RAILROAD COM-
PANY; THE ORANGE AND NORTHWESTERN RAILROAD
COMPANY; IBERIA, ST. MARY AND EASTERN RAILROAD
COMPANY; SAN BENITO AND RIO GRANDE VALLEY RAIL-
WAY COMPANY; NEW ORLEANS, TEXAS AND MEXICO
RAILWAY COMPANY; NEW IBERIA AND NORTHERN RAIL-
ROAD COMPANY; SAN ANTONIO SOUTHERN RAILWAY
COMPANY; HOUSTON AND BRAZOS VALLEY RAILWAY
COMPANY, HOUSTON NORTH SHORE RAILWAY COM-
PANY; ASHERTON AND GULF RAILWAY COMPANY; RIO
GRANDE CITY RAILWAY COMPANY; ASPHALT BELT
RAILWAY COMPANY; SUGARLAND RAILWAY COMPANY.**

(Guy A. Thompson, Trustee)

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

(a) The correct rate of pay for the position of General Clerk at Woodsboro, Texas, is \$9.38 per day. Also

(b) Claim that the rate of \$9.38 per day be made effective retroactive to the date the position was created.

EMPLOYEES' STATEMENT OF FACTS: In June and July, 1946, due to a seasonal increase in business it became necessary for the Carrier to create additional positions at certain stations in Seniority District No. 26, including the position here in dispute at Woodsboro, Texas.

On June 22, 1946, the Carrier issued Bulletin No. 151 advertising new position of General Clerk at Robstown, Texas, with rate of \$9.60 per day. The duties of which were to—

“Check Yard, weigh, seal and bill cars, make reports and other general clerical duties.”

statement attention of the Board is directed to the fact that the following positions of General Clerk with rate of \$8.50 per day (tabulated in Carrier's Statement of Facts) were established subsequent to the Letter Agreement of October 13, 1940, with an annual assignment of 306 days, and the employees did not contend that those positions when established should be paid a higher rate comparable to the rate paid some General Clerk on the same seniority district whose rate of pay had been inflated through operation of the Letter Agreement:

Bishop—position established—November, 1944

Raymondville—position No. 1 established—February, 1944
position No. 2 established—April, 1946

Edinburg—position established—January, 1945

LaFeria—position established—February, 1943

Weslaco—position No. 1 established—October, 1944
position No. 2 established—October, 1944

Donna—position established—December, 1942

When consideration is given to the above facts, all of which conclusively show the absence of any justification for or merit to the contention and accompanying claim of the Employees, it is clearly evident that the contention of the Employees should be dismissed and the alleged claim accordingly denied.

OPINION OF BOARD: This case presents two simple questions. Did the Carrier comply with Rule 51(a) of the Agreement in fixing the rate for a general clerk at Woodsboro, Texas, at \$8.50? If not, is the Organization's claim for a rate of \$9.38 correct?

Rule 51(a) says:

"The wages for new positions shall be in conformity with the wages for positions of similar kind or class in the seniority district where created."

On July 5, 1946, the Carrier bulletined a temporary position at Woodsboro, rate \$8.50, duties, "check yard, seal and bill cars, make reports and other general clerical duties." On July 22, 1946, the Carrier bulletined abolition of the position, effective July 25, 1946, owing to termination of the grain season.

The Organization argued that the clerk should have received the same rate paid the general clerk at Refugio, the nearest station, six miles north of Woodsboro, "in accordance with the meaning and intent of Rule 51(a)." In further support of its claim, the Organization pointed out that the Carrier, in filling a similar position at Robstown, had bulletined the rate received by another general clerk at Robstown, \$9.60.

The Carrier made much of how various rates for general clerks in this seniority district had been affected by reductions from 365 to 306 days a year—all of which we consider to be irrelevant. However, the Carrier also introduced a description of the duties of all the general clerks in the district, along with their rates of pay, at the time the Woodsboro position was filled. This was uncontroverted; the Board accepts these job descriptions as the basis for its judgment, as required by the Agreement.

Careful study of the duties of these general clerks shows that twelve of the thirty-six were assigned approximately the same duties as those assigned at Woodsboro. Two of the twelve were rated at \$8.40, seven at \$8.50, one at \$9.60 and two at \$9.73.

A majority, in other words, were at the same rate set for Woodsboro. Or, to put it in still another way, nine were the same or less; only three were higher.

There is nothing in Rule 51(a) to indicate that the Carrier is obligated to set rates for new positions in conformity with the highest wages for positions of similar kind or class. To the contrary, such clauses are always interpreted to mean "going" or "prevailing" wages. The Carrier was within its right in so interpreting the clause in the instant case.

This Board would be remiss, however, if it failed to point out in this opinion that the Carrier was asking for trouble when it stood on its right to fix the clerks' rate at \$8.50 at Woodsboro, in view of all the facts. Every other general clerk from Victoria to the north, to Driscoll to the south, was getting a higher rate. All three of the higher paid clerks' positions whose duties were approximately the same as those at Woodsboro were in this vicinity. One of the three, at Robstown, was established and then abolished for the same reason and at approximately the same time the Woodsboro position was set up, but at a rate of \$9.60. There is nothing in Rule 51(a), however, saying that rates in the "immediate vicinity" should be governing in setting new rates.

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary

Dated at Chicago, Illinois, this 23rd day of September, 1947.