

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Adolph E. Wenke, Referee

PARTIES TO DISPUTE:

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

**GULF COAST LINES, INTERNATIONAL-GREAT NORTHERN
R. R. CO., THE ST. LOUIS, BROWNSVILLE & MEXICO RY. CO.,
THE BEAUMONT, SOUR LAKE & WESTERN RY. CO., SAN
ANTONIO, UVALDE & GULF R. R. CO., THE ORANGE &
NORTHWESTERN R. R. CO., IBERIA, ST. MARY & EASTERN
R. R. CO., SAN BENITO & RIO GRANDE VALLEY RY. CO., NEW
ORLEANS, TEXAS & MEXICO RY. CO., NEW IBERIA &
NORTHERN R. R. 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 correct rate of pay for position of Ticket Clerk-Accountant at Corpus Christi, Texas, was, in December 1945, \$9.45 per day. Also

(b) Claim that rate of \$9.45 per day be paid the Ticket Clerk-Accountant retroactive to date the position was created, plus subsequent general wage increases.

EMPLOYEES' STATEMENT OF FACTS: On December 14, 1945 the Carrier issued Bulletin No. 413, advertising a new position of Ticket Clerk-Accountant at Corpus Christi, Texas, with rate of \$7.92 per day and with an annual assignment of 306 days.

At the time this position was established there was a like position in this same office with rate of \$9.45 per day.

The duties of the two positions are "of similar kind or class" and they are in the same seniority district.

The rates of pay mentioned herein have all been increased \$1.48 per day.

the time it was discontinued October 31, 1945, together with the "Opinion of Board" in Award 3010, it is clearly evident that it is not a "New Position" as alleged by the Employees, and accordingly the provisions of Rule 51(a) are not applicable thereto. Therefore, the position of the Employees that rate of \$9.45 per day be paid the Ticket Clerk-Accountant retroactive to the date the position was reestablished December 14, 1945, is entirely without merit or basis and should accordingly be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: The System Committee claims that the position of Ticket Clerk-Accountant established at Corpus Christi, Texas, on December 14, 1945 should have had a \$9.45 per day rate instead of \$7.92, as fixed by the Carrier. It asks that the Carrier be required to pay the higher rate retroactive to the day it was established.

Rule 51(a) of the parties agreement provides:

"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."

A Letter Agreement of the parties, dated October 13, 1940, is as follows:

"Mr. J. L. Dyer, Gen. Chairman
B. of R. C.
Houston, Texas.

Dear Sir:

With reference to agreement regarding 365 day assigned positions not necessary to the continuous operation of the Carrier.

It is agreed that all 365 day assignments, not necessary to the continuous operation of the carrier, will be reduced to 306 day assignments and the daily rate will be adjusted so that the earnings will be the same as received for 365 days.

This understanding shall remain in effect until changed in accordance with the terminating rule of the Agreement.

Yours truly,

(Signed) W. G. Choate,
General Manager.

Accepted
(Signed) J. L. Dyer
Gen. Chairman, B. of R. C.

The record establishes that the Carrier, by bulletin No. 429 dated August 21, 1943, established a position of Ticket Clerk-Accountant No. 2 at Corpus Christi, Texas; that it was a 306 day position with a rate of \$7.20 per day; that this was the regular established rate for work of this same or similar kind and class in that seniority district at that time; and that the duties of the position of Accountant-Cashier, a position in the same office was of a similar kind or class.

Thereafter, in December of 1943, both the position of Ticket Clerk-Accountant and Accountant-Cashier were raised to \$7.92.

In July of 1945 the position of Accountant-Cashier, a 365 day position, was reduced from 365 to 306 days per year and, pursuant to the Letter Agreement of October 13, 1940, the daily rate was increased from \$7.92 to \$9.45 per day. This is the position and rate of pay upon which the Committee bases its claim.

On October 27, 1945, by Bulletin No. 341, the Carrier abolished the position of Ticket Clerk-Accountant No. 2 at Corpus Christi, Texas, effective as of October 31, 1945.

By Bulletin No. 413, dated December 14, 1945, the Carrier advertised and established in the Corpus Christi Office a new position of Ticket Clerk-Accountant on a 306 day basis with a rate of \$7.92 per day.

It is the Committee's contention that the rate should have been at a daily rate of \$9.45 instead of \$7.92 because the Accountant-Cashier, a position, with similar kind and class of work, was being paid on that basis.

Carrier contends that this was not a new but merely the reinstatement of the same position that was discontinued as of October 31, 1945. The language used by the Carrier in its Bulletins 341 and 413 is definite and the generally understood meaning thereof is not in doubt. If Carrier intended to only discontinue the position and later reestablish it, then it should and could have used language clearly so indicating. We hold the Carrier is bound by the language it used and cannot now be permitted to contend that it intended to do otherwise. See Award 2239.

The record establishes that at the time the position of Ticket Clerk-Accountant was established on December 14, 1945, the wages for positions of similar kind or class in the seniority district was \$7.92 per day unless it can be said that the increase of the Accountant-Cashier in July of 1945 from \$7.92 to \$9.45 made the latter rate applicable. We are of the opinion that since this differential was brought about solely by the application of the Letter Agreement of October 13, 1940, it did not affect the wage structure set up by the controlling agreement and therefore not applicable to Rule 51(a) thereof. This Division has so held in Awards 3420 and 3550 and we adhere to those Awards. We think the Carrier applied the correct rate of pay to the positions when established.

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 the Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 26th day of January, 1948.