

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

H. Nathan Swaim, Referee

PARTIES TO DISPUTE:

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

ERIE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that the Carrier violates the Clerks' Agreement when it requires Freight House employes classified as Truckers at Huntington, Indiana, to perform higher rated work at a lesser rate of pay, and

That Carrier shall now compensate employes D. A. Anglemyer and J. A. Martin at Checker's rate of pay of \$1.11 per hour, retroactive to January 1, 1946, and \$1.13½ per hour retroactive to May 22, 1946.

EMPLOYES' STATEMENT OF FACTS: There are employed at Huntington, Indiana Freight House four (4) regular assigned employes and from four (4) to six (6) additional or extra employes. Two of the regular assigned forces are classified as Foremen, and the remaining employes are classified and paid as Truckers. As a result of the situation existing at Huntington, a study was made by the employes, resulting in a showing that employes Anglemyer and Martin are and have been performing more than four (4) hours work each day checking, receiving and delivering freight.

The Agent at Huntington upon being approached with respect to this situation advised he could not pay a Checker's rate because he had no Checker's rate at Huntington, although the established Checker rate in same seniority district at Chicago, Illinois prior to January 1, 1946 was 95.4¢ per hour. When the freight at Chicago backs up it is diverted to Huntington, Indiana, and handled by employes at that point. Our request for a Checker's rate similar to that paid Checkers at Chicago has been denied by the Carrier.

POSITION OF EMPLOYES: There is in effect between the parties an Agreement bearing effective date of July 1, 1945, which contains the following rules:

Rule 32 (Rating Positions) reads as follows:

"Positions (not employes) shall be rated and the transfer of rates shall not be permitted, except by agreement between the Management and the General Chairman or their representatives."

Rule 34 (Preservation of Rates) reads as follows:

"Employes temporarily assigned to higher rated positions shall receive the higher rates while occupying such positions; employes temporarily assigned to lower rated positions shall not have their rates reduced."

rate compromise would be \$.94½ for this classification at Huntington, Indiana; and as we have also previously advised you with respect to employes Anglemyer and Martin, any adjustment in their rate of pay should be retroactive to January 1, 1946.

In view of your refusal to adjust this matter in line with claim originally submitted, we are progressing the matter to the Third Division National Railroad Adjustment Board.

Yours very truly,

(sgd) J. J. Schreur,
General Chairman"

(Emphasis Supplied)

POSITION OF CARRIER:

The only controversy herein involved is the rate to be paid on the established position. The agreement provides that such questions shall be negotiated. Since the negotiations have not been concluded in accordance with the Railway Labor Act there is no basis for claim.

When the agreement became effective September 1, 1936 there were many locations where Checker positions had never been established. Foreman and Truckers performed all station platform work. At a number of such locations Checker positions and rates applicable thereto have since been established as result of negotiations between the parties.

There is no merit to this claim filed on behalf of Employees D. A. Anglemyre and J. A. Martin because:

1. There was no change in the working conditions or basis of pay for D. A. Anglemyre or J. A. Martin who for many years worked at Trucker's rate and who, under direction of Agent or Foreman, did all work.
2. The claim is nothing other than a request for an increase in rate of pay which should be and is a matter of negotiations.
3. This claim should be denied or dismissed for lack of jurisdiction because it is solely a matter for negotiation between the parties.

OPINION OF BOARD: During the year 1947 there were four regularly established positions in Carrier's Freight House at Huntington, Indiana, to-wit: Two Foremen and two Truckers. Foremen are in Group 1 of the Scope Rule of the Agreement and Truckers are in Group 2.

It is contended by the Organization and apparently conceded by the Carrier that during the year 1946 these Truckers were doing more than four hours work each day as "Checkers", a position or classification also within Group 1 of the agreement.

In March, 1946, the Organization made written demand for compensation of 95½¢ per hour for claimants as Checkers, retroactive to Jan. 1, 1946. The rate claimed, the rate paid Checkers in Chicago Freight work, was said to be "account Chicago Freight is diverted to this station."

The parties then had conferences and correspondence relative to proper Checker rate to establish at Huntington, the Organization insisting on the Chicago rate and the Carrier contending that the rate for Checker at Lima, Ohio, should be used.

The Carrier finally announced that as of January 1, 1947, it was reclassifying the second Foreman at Huntington as a Checker, was establishing a Checker rate there of 92½¢ per hour and that Truckers assigned to Checker work would be paid Checker rate for actual time worked with a

minimum of one (1) hour up to four (4) hours and would be paid for Checker rate for each day in which they worked more than four hours.

The Organization agreed to the raise in the rate of first Foreman and the reclassifying of second Foreman as Checker, but still insisted rate for Checker should be the Chicago rate and that adjustment on pay for two claimants should be retroactive to January 1, 1946.

The claim here is that the Carrier violated the agreement in having the two Truckers perform Checker work at Trucker's rate of pay and that they should be compensated for such work, retroactive to January 1, 1946, at Chicago Checker's rate.

The Carrier contends that since no position of and rate for Checker had been established at Huntington it was a question for negotiation between the parties and could not be the basis of a claim before this Board. Awards 1844 and 1845 of this Board held contrary to this contention of the Carrier.

There, as here, the employees contended that they had been performing more than four hours' work per day in higher rated clerical positions without receiving the higher daily rate of pay. This Board in Award 1844 said, "If in fact an employee in a lower rated position is regularly performing work for more than four hours per day in a higher rated position or in a higher rated classification he is entitled to the pay of the higher rated position if there is one, and if there is none then it is the duty of the Carrier to bulletin and establish one and the rate of pay therefor agreeable to the provisions of Rule 37."

Rule 35 of the current Agreement provides the following method for establishing rates for new positions:

"The rates of pay for new positions will be in conformity with the rate of analogous positions (of similar kind and class) in the seniority district where created or in comparable localities."

The Organization insists that the only analogous position in the Marion District, the seniority district in which Huntington is located, is Chicago, and that therefore the Chicago rate should be applied. It is a well-known fact that rates of pay affected by the volume of work in the office, the size of the community and the living costs where the work is to be performed. None of these factors in Huntington, Indiana, would be similar to the same factors in Chicago.

The Carrier points to Lima, Ohio, in the same seniority district and to Marion, Dayton, Galion and Mansfield, Ohio, in the adjoining seniority district, as being comparable localities and as furnishing a proper basis for rate of pay in Huntington. In each of these cities the rate of pay for Checkers was 90¢ per hour January 1, 1946, and was increased to 92½¢ per hour as of May 22, 1946. The Carrier, by an Exhibit made a part of the record, has shown the population of each of these cities, the average freight revenue per month, the tons of freight handled each month from March, 1946, to March, 1947, inclusive. The exhibit shows these cities to be "comparable localities" to Huntington, Indiana.

The Organization cited scattered communities where the Carrier was paying a higher Checker rate but none is comparable to Huntington, Indiana.

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 violated the Agreement by not establishing a Checker rate of pay at Huntington, Indiana, as of January 1, 1946; that the rate which should have been then established was 90¢ per hour and that said rate should have been increased to 92½¢ per hour effective May 22, 1946; and that Claimants should be paid the difference between the amount they should have received as Checkers for the days during 1946 on which they worked four hours or more as Checkers.

AWARD

Claim sustained as indicated by Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary.

Dated at Chicago, Illinois, this 22nd day of March, 1948.