

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

James M. Douglas, Referee

PARTIES TO DISPUTE:

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

**FLORIDA EAST COAST RAILWAY COMPANY (SCOTT M.
LOFTIN AND JOHN W. MARTIN, TRUSTEES)**

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

(a) The carrier violated the Clerks' Agreement by failing and refusing to establish a rate of \$6.8580 per day, in accordance with provisions of Rule 56 for position of ticket clerk newly created at Fort Pierce, Florida, February 21, 1943 and seven (7) similar positions subsequently created at that point, and

(b) That all employees involved in or affected by the agreement violation be compensated for all losses sustained between dates positions were established and December 1, 1944.

EMPLOYEES' STATEMENT OF FACTS: On February 21, 1943, carrier issued bulletin, No. CL-A-129 advertising position of ticket clerk at Fort Pierce, rate of pay \$6.2980 per day, stipulating the following:

"Duties of this position consist of selling railroad (interline and local) and Pullman tickets, quoting train and ticket information, answering telephone, checking baggage, making daily, weekly and monthly reports, and other duties assigned by Agent."

Subsequent to February 21, 1943, seven additional ticket clerk positions have been advertised and established at the rate of \$6.2980 per day.

Ticket clerk positions are maintained at Camp Murphy, Boca Raton, West Palm Beach, Fort Lauderdale, Hollywood and Miami, all of which are in the same seniority district in which Fort Pierce is located. All ticket clerk positions in this seniority district, with the exception of ticket clerk positions at Fort Pierce, were rated at \$6.8580 per day at the time bulletin CL-A-129 was issued.

The advertised duties on ticket clerk positions at Camp Murphy read as follows:

"Duties of this position consist of selling railroad tickets, interline and local, Pullman tickets; keeping ticket accounts, assisting in handling baggage and other duties assigned by Agent."

The advertised duties of ticket clerk positions at West Palm Beach are described as follows:

cordance with Rule 66. This rule has appeared in its present form in all agreements with clerical and station employes on the property of this Railway since January 1, 1920, and the policy of preserving the identity of positions and the rates thereof has been observed throughout the existence of the rule. Certainly after a policy has been consistently followed under a rule for over twenty-five years throughout the life of three agreements with mutual satisfaction to both Employes and Railway, and the same rule is proposed by the Employes and accepted by the Railway for inclusion in the fourth and present agreement, there can be no doubt as to what the intentions and understanding of the Railway or Brotherhood were when the Agreement of January 1, 1938 was negotiated. It is inconceivable that any rule, with its purpose so well established in mutual understanding over a period of over twenty-five years can now be interpreted in any other way than that which has applied to it thus far.

The Railway was completely justified in establishing for the Fort Pierce Ticket Clerk position in question, when it was reinstated on March 15, 1943, the very same rate which would have been effective for that position if it had never been discontinued.

The claim of the Employes, being completely without merit, should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: In February, 1943 Carrier added a position of ticket-clerk at Fort Pierce, Florida. The rate for such position was determined by using the same rate applied to a similar position originated in 1929 and then adjusting it by adding the general wage increases since that date. The rate thus determined was lower than all others for similar positions in the same seniority district.

Petitioner in this claim is seeking to have the rate of that position and seven similar positions subsequently created at that point increased to conform with the rate of other positions of the same kind in the same seniority district, and relies on Rule 56.

Rule 56 reads:

"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."

Carrier contends this rule is not applicable here because the position in question is not a new position, but merely the reestablishment of a seasonal position.

The history of this position shows it was first created in 1929 as a temporary position. It was discontinued March 25, 1929. It was not reestablished until after a lapse of eight years on February 15, 1937. It was cut off May 4, 1937. Except for the assistance of the ticket-clerk on these two occasions over an interval of eight years, all the ticket selling work at Fort Pierce was done by ticket clerk-operators and operators. The majority of ticket sales consisted of simple local tickets.

However, radical changes occurred at Fort Pierce because of the war. Naval and Military stations there caused a tremendous increase in travel. Necessarily, sales of tickets increased in proportion, and sales consisted not of simple local tickets but of coupon tickets to all parts of the United States, involving intricate routes and rates.

When the ticket-clerk position was filled on March 15, 1943 Carrier had designated it as a temporary position, then on June 1, 1943 converted it to a permanent status. On December 1, 1944 Carrier increased the rate to the figure sought in this claim. Thus, this position was then placed on a rate parity with the majority of the positions of ticket-clerk in the clerical seniority district in which Fort Pierce Agency was located.

The facts do not support Carrier's contention that the position in question was merely the reestablishment of a seasonal position previously created. The word seasonal refers to a period of time, relatively short, but which recurs periodically. The history of the position shows its previous use only on two occasions between 1929 and 1943. This cannot sustain the seasonal or periodic nature of such position for which Carrier contends.

The facts clearly establish that the position when created in 1943 was a new position, and therefore subject to Rule 56.

Accordingly, the claim must be sustained.

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 Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 7th day of June, 1948.