

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

John W. Yeager — Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

SEABOARD AIR LINE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on Seaboard Air Line Railroad Company, that as a result of the 1st, 2nd and 3rd trick operator positions at Tallahassee, Florida being reclassified to clerk-operator effective April 1, 1946, in accordance with Rule 3 of the Telegraphers' Agreement, the rate of pay for these positions shall be increased five cents (5c) per hour as of that date to conform with the rate for positions of similar work and responsibility in the same seniority district as provided by Rule 17 of said agreement.

EMPLOYES' STATEMENT OF FACTS: An agreement bearing date October 1, 1944, as to rates of pay and rules of working conditions is in effect between the parties to this dispute.

At the time the said agreement was made—October 1, 1944—the 1st, 2nd and 3rd trick operator positions at Tallahassee, Florida, did not include the performance of clerical work. These three positions solely required the performance of communication service and were classified only as operator and so shown in the wage scale of the agreement. The rate of these three positions was fixed in the agreement of October 1, 1944, on the basis of their classification at that time.

Effective April 1, 1946, the Carrier reclassified these three positions to clerk-operator by adding clerical duties formerly performed by other employees not under the Telegraphers' Agreement thereby creating new positions for which Rule 17 of the Telegraphers' Agreement required that compensation will be fixed in conformity with that of existing positions of similar work and responsibility in the same seniority district.

The Carrier declined the Committee's request that the rate of pay for these three positions be fixed by an increase of five (5) cents per hour upon reclassification to conform with the rate paid similar positions of similar work and responsibility in the same seniority district.

POSITION OF EMPLOYES: The following quoted rules of the prevailing Telegraphers' Agreement are invoked in this case of dispute:

"Rule 3. Classification. Where existing payroll classification does not conform to Rule 1, employees performing service in the classes specified therein shall be classed in accordance therewith."

"Rule 17. New Positions. When new positions are created, compensation will be fixed in conformity with that of existing positions of similar work and responsibility in the same seniority district."

even had new positions been created as contemplated by Rule 17 (we have not and do not now admit that we created new positions by reverting to the original plan of having the operators perform clerical work), the rate in effect was still in conformity with rates for positions assigned similar work and responsibility in that seniority district. This information was given to representative of the employees and even though he was unable to refute same by actual proof, he still contended that we had violated the Telegraphers' Agreement.

Without prejudice to our position as stated above which, briefly is as follows:

1. That we did not create new positions by reverting to the long-established plan of having these operators perform clerical work, and,
2. Even though these positions were to be considered as "new positions" we did not violate the agreement when we declined to increase the rates by 5¢ an hour, for the reason that the existing rate was in conformity with rates assigned to positions of similar work and responsibility in the same seniority district—

it is the carrier's contention that your Honorable Board is without authority to prescribe the rate for any given position until such time as the claimant's representative produces a record adequate to disclose not only that the agreement has been violated but a record that will enable you to determine the proper rate. We were not presented with such a record, therefore, we assume the employees will be unable to furnish the Board with such a record and, in the event they do include in their submission sufficient record as described above, then since they did not give us the benefit of such information and record, the claim has not been handled in accordance with the Railway Labor Act.

Our position that the burden of proof rests on the employees to produce record that would enable you to decide on the proper rate is adequately supported by the Opinion of the Board in Award No. 1788, wherein it was stated—

"And if continued disagreement after negotiation, it may be assumed to be an appropriate function of this Board, upon finding a violation of the governing rule, to approve or prescribe the rate deemed to conform to that rule, such action can only be taken upon a record adequate not only to disclose the fact of violation but to determine the proper rate in the circumstances."

In consideration of the above facts and circumstances, carrier respectfully requests that the claim be denied as without merit.

Exhibits not reproduced.

OPINION OF BOARD: At Tallahassee, Florida, on the lines of the Carrier are three operator positions. They are assigned to first, second, and third tricks. The Brotherhood contends that on April 1, 1946, clerical duties were added to these positions and that thereby they became new positions within the classifications of clerk-operator and that they should be so regarded. The demand here is that they be so regarded on that account and that the rate of pay of the positions be increased as of April 1, 1946, by five cents (5¢) per hour to conform with the rate for similar positions with comparable work and responsibility in the same seniority district. It contends that the failure to so reclassify these positions and to assign to them the higher rate of pay was and is a violation of the controlling Agreement.

The following Rules of the Agreement are the ones requiring consideration:

"Rule 1—SCOPE—This agreement will govern the employment and compensation of agent-telegraphers, agent-telephoners, division car distributor-operators and report clerk-operators, telegraph and

telephone operators (except switchboard operators), clerk-operators, morse-teletype operators, towermen-telegraphers, towermen-telephoners, levermen, levermen-operators, and also such station agents, assistant station agents and ticket agents as are listed herein."

"Rule 3—CLASSIFICATION—When existing payroll classification does not conform to rule 1, employees performing service in the classes specified therein shall be classed in accordance therewith."

"Rule 17—NEW POSITIONS—When new positions are created, compensation will be fixed in conformity with that of existing positions of similar work and responsibility in the same seniority district."

These Rules are from the Agreement effective October 1, 1944, and they are identical with the same numbered Rules of the previous Agreement which was in effect from November 1, 1925 to the effective date of the present Agreement.

It appears that these three positions came into being as operator positions many years ago and have so continued. In them, up to July 1942, the operators were required to perform all types of clerical work along with the telegraphic work. In July 1942 on account of increased business occasioned by the war clerks were assigned to take over the clerical work at this location. In 1946 on account of decrease in business the clerks were removed and the operators were again required to perform clerical work, as the Carrier contends, performed by them prior to July 1, 1942. This contention of the Carrier must be accepted since there is no convincing showing to the contrary.

This being true it cannot well be said that new positions were in fact created at Tallahassee in 1946. Their essential character was not changed from what it had been for many years.

The next question for consideration is that of whether or not these positions are entitled to reclassification under the terms of Rule 3. Obviously if they are clerk-operator positions within the meaning of Rule 1 instead of operators, then they are entitled under Rule 3 to be so reclassified.

The Rules of the Agreement do not draw a clear line between these two classifications and neither do the Awards of this Division. In fact the line, if there may be said to be a line, is very indistinct. Likewise no very satisfactory basis suggests itself for a clear line to be drawn at this time. It therefore becomes necessary to consider all of the elements presented and from this consideration see if it is possible to classify these either as operator or clerk-operator positions.

The first element to which attention is directed is that up to 1942 in these positions was performed clerical work and apparently without protest the Brotherhood permitted them to remain as operator positions. As to the clerical work performed in the positions over that period the Brotherhood furnishes no information. The Carrier says that it was substantially the same as since April 1946.

A check on the property by the Carrier indicates that at the time the check was made the first trick operator was performing work other than telegraphing one hour and thirty minutes per day, the second, one hour per day, and the third, three hours per day.

There is no contention that the clerical duties performed may not be properly performed by those covered by the Scope Rule. They must therefore be regarded as properly clerical duties of these positions.

We infer that the clerical duties were performed within the spread of the assignment of these positions although no showing is made in that respect.

It is shown that at one other station in the same seniority district operators perform functions like those performed at Tallahassee.

All of these elements considered, and especially the failure of the Rules to clearly define classifications, the treatment of these positions by the parties for so many years, the amount of clerical duties performed, the time when performed, and the fact of similar performance elsewhere without reclassification, it appears proper to say that the right to reclassification here has not been sustained. This being true the right to an increased rate of compensation cannot 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 the claim has not been sustained.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary.

Dated at Chicago, Illinois, this 24th day of June, 1948.