

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Francis J. Robertson, Referee.

PARTIES TO DISPUTE:

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

THE WESTERN PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of Sytem Committee of the Brotherhood of Railway Clerks that:

(a) Since September 25, 1941 Carrier has violated provisions of Clerks' Agreement by rating positions assigned to handle crew aboard at Portola at rate which has now become \$9.75 per day.

(b) Clerical positions assigned to handle crew boards at Stockton, California and Portola, California should properly be paid at rate which has now become \$10.52 per day, retroactive to November 30, 1942 at Stockton and September 25, 1941 at Portola.

(c) All employees adversely affected by reason of failure of the Railroad properly to classify these positions, and rate the same as described in (a) and (b) above shall be reimbursed for all wage loss sustained.

EMPLOYEES' STATEMENT OF FACTS: At Stockton, California, the work of handling trainmen's crew board for many years was assigned to and performed by train desk clerks, currently rated at \$10.14 per day. During this period the work of handling the switchmen's board was performed by yardmasters.

At Portola, California, for many years the yardmasters were held directly responsible for the handling of the switchmen's board and the trainmen's board.

Effective November, 30 1942 positions designated as train desk clerk were created at Stockton, California, at the rate which has now become \$10.14 per day. To these positions was assigned the work of handling both the trainmen's and switchmen's boards.

The duties of positions assigned to handle crew boards at Portola and at Stockton are, generally, as follows:

HANDLING TRAINMEN'S BOARD:

Keep a complete list of all movements of trainmen.

Issue calls for crews for all trains and deadheaded crews and men.

Keep crew board, showing arrivals, departures, calls, lay-offs, reports for duty.

as stated in Award No. 3437, it is the opinion of the Carrier that you should deny jurisdiction. There is no position of crew dispatcher in effect on the Western Pacific and the Requested rate of \$10.52 per day is an entirely new rate.

SUMMARY: Carrier contends that the claim of the employees should be denied for the following reasons:

(1) The schedule provides that classes and rates of pay are subject to negotiations rather than by Award of your Board.

(2) The duties required of the employees handling the train crew boards at Portola and Stockton Yard does not warrant any higher rate of pay than presently in effect. The duties are strictly routine and do not require the exercise of judgment such as is embraced within the duties and responsibilities of bona fide crew dispatchers.

(Exhibits not reproduced.)

OPINION OF BOARD: From the rather lengthy Statement of Facts submitted in this case, stripped of non-essentials, it is sufficient to say that this dispute involves the rate of pay for Clerks handling crew boards at Portola and Stockton, California.

On September 24, 1941, a position designated as Yard Clerk, present rate \$9.75 per day, was created at Portola and the work of handling both Trainmen's and Switchmen's boards was assigned to said position. Effective November 30, 1942 a position designated as Train Desk Clerk (sometimes called Crew Desk Clerk in Employees' Statement of Facts) was established at Stockton at rate which has now become \$10.14 per day. Before September 25, 1941, Yardmasters at Portola handled the crew board and Call boys did the actual calling of crews. Prior to November 30, 1942 at Stockton the work of handling Trainmen's crew board was performed by Train Desk Clerks, and the Switchmen's board was handled by Yardmasters.

An attempt was made on the property to settle this dispute by establishing a rate of \$10.52 a day for each of the positions involved. This rate of \$10.52 per day was suggested by the Brotherhood's General Chairman because it conformed to a rate for a similar position on the Southern Pacific.

During the course of negotiations at a conference with the parties on April 12, 1942, Carrier offered to establish the rate of \$7.80 per day (which has now become \$10.52 per day) for each of the two positions here involved provided that the Brotherhood would agree to place the positions under the provisions of Rule 2 as excepted positions. There is conflict in the record with respect to the nature and quality of the work required in these two positions as between each other. However, the Employees do not base their claim on an equalization of the Yard Clerk's position at Portola with the Train Desk Clerk's position at Stockton, but on the basis that in effect a meeting of the minds was achieved as of the date of April 12, 1945 with respect to the rate of these two positions and hence that this Board should direct the Carrier to establish said rate.

We cannot agree with this contention of the Employees. It is a well settled principle that under Rule 9 of the 1930 Agreement and Rule 10 of the 1943 Agreement, both of which carry identical language, that rates for new positions must conform to rates for similar positions under the agreements involved, and not for similar positions maintained by other parties under other agreements. As a matter of fact, this principle worked to the advantage of the Employees in Award 3483 of this Board.

The Carrier's offer to establish the rate which has now become \$10.52 per day for these positions provided that the parties agree to place the positions under the provisions of Rule 2 cannot be considered as binding upon it nor as a basis for this Board to set such a rate for these two positions. As a matter of fact, Carrier's offer can hardly be considered by this Board for it was primarily an offer of compromise and it is fundamental that a rejected offer of compromise, after its rejection, is no longer binding upon

the party who makes it. In law evidence of such offer is not permitted to be introduced. See Award 2283.

Reduced to bare essential this case resolves itself around the proposition that two new positions were created at Portola and Stockton and that so far as appears from the record there is no position of similar kind or class in the seniority districts where created. The Employees are seeking to have the Board establish a new wage rate for a new position. Under the circumstances here present, that should be done by negotiations and agreement of the parties. This Board has no jurisdiction to do so. (See Award 3487.)

For want of jurisdiction, this claim should be dismissed.

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 no jurisdiction over the dispute involved herein; and

That the claim should be dismissed without prejudice.

AWARD

Claim dismissed without prejudice.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 12th day of October, 1948.