

Award No. 4125

Docket No. CL-4029

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 System Committee that position designated as Ticket Accounts Clerk and advertised through Circular issued by Auditor Freight and Passenger Accounts on February 17, 1944 at rate which has now become \$10.27 should properly have carried rate which has now become \$10.73 per day and that Mrs. Alta Thomas and all other employees adversely affected by reason of failure of the Railroad properly to rate this position shall be compensated for all wage loss sustained since February 17, 1944.

EMPLOYES' STATEMENT OF FACTS: Through Bulletin of September 28, 1942 copy of which is attached hereto an Employees' Exhibit "A", position designated as Ticket Accounts Clerk was created in office of Auditor Freight and Passenger Accounts at rate which has now become \$10.73 per day with duties described as follows:

"Duties consist of auditing Agents Reports of Local and Home Interline Ticket Sales, preparing figures for Journal Entries, checking and balancing Agents Monthly Balance Sheets, preparing Journal Entry figures from Foreign Roads Ticket Reports, compiling statistics for I.C.C. Reports and such other duties as may be assigned."

Through Bulletin dated February 17, 1944, copy of which is attached hereto as Employees' Exhibit "B", position designated as Ticket Accounts Clerk was created in office of Auditor Freight and Passenger Accounts at rate which has now become \$10.27 per day with duties described as follows:

"Duties consist of assisting in checking Agents Ticket Reports and accounts, preparing T C F A ticket orders, handling prepaid orders, apportionment work and such other duties as may be assigned. Requires some knowledge of Agents reports and accounting office procedure in connection therewith."

When rates of pay were established through agreement dated June 18, 1927 there was in existence a position designated as Interline Clerk at rate which has now become \$10.54 per day with assigned duties as follows:

"Home Interline Tickets sold and apportioning revenue to interested carrier. Ticket tracers, checking redemption drafts and making bills collectible."

This position was newly created and there was not a similar position in existence in the seniority district. Therefore, Carrier acted properly in applying a rate corresponding proportionately to the position of Ticket Accounts Clerk to which had been assigned the higher rated duties. In other words, it is the position of the Carrier that the duties assigned to the position of Ticket Accounts Clerk in the bulletin of February 17, 1944, were of a lesser degree to the extent which warranted a lower rate of pay.

For the reasons herein set forth, the Carrier contends that the claim of the employees should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: This dispute involves the questioned rate of pay for position of Ticket Accounts Clerk created by Carrier, bulletin dated February 17, 1944 in the Office of Auditor, Freight and Passenger Accounts.

The Carrier assigned a rate to said position which has now become \$10.27 per day. Employees contend, under Rule 10 of the December 16, 1943 Agreement, (1) that the position should carry a rate which has now become \$10.73 because that is the rate of an existing position of Ticket Accounts Clerk created by bulletin of September 28, 1942, Office of Auditor, Freight and Passenger Accounts; or in the alternative (2) that the position should carry the rate of a previously existing position of Interline Clerk which was established by application of an Arbitration Award in 1927, and whose rate would now be \$10.54 per day. Rule 10 of the above referred to Agreement reads as follows:

"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."

If the Employees are to prevail they must sustain their position on the first mentioned basis, for we have already indicated by our decision in Docket CL-4031 that we do not consider Rule 10 as requiring conformity to previously abolished positions of similar kind or class.

We recognize that mere identity of titular designation is not a sufficient basis for a finding of similarity of kind or class. We feel that it is the duties of the position and not the title that determines its character. In a doubtful case, however, the designation used in establishing the position may be considered as having some bearing on the question. Let us consider what the record reveals with respect to the similarity of kind or class between the two positions of Ticket Accounts Clerks involved herein. First, with respect to duties actually required of the 1942 position, we find that Carrier's Vice President, by letter dated May 21, 1946, indicated that on September 1, 1942 the duties of the incumbent of the position were changed when the work of balancing of Agent's monthly balance sheets and preparing journal entry was temporarily transferred to the position of Interline Clerk. In the same letter we find that in February 1944 the apportionment work on the position became so heavy that the employee of the position could not handle all of it and it became necessary to create a position to assist with the apportionment work, and hence this position was created by bulletin dated February 17, 1944. Thus, it appears that for at least a period of one and one-half years, the older position of Ticket Accounts Clerk had not been performing the duties of balancing Agent's monthly balance sheets. It further appears that that element of the position had not been restored to it even as of May 1946.

In describing the duties of the new position the language used by the Carrier was duties consist of **assisting in checking Agent's ticket reports and accounts** whereas the older position description was **auditing** Agent's reports of Local and Interline ticket sales. Does the difference between the terminology of **auditing** and **assisting in the checking** of imply a lesser quality of work in the **assisting in the checking** of as compared to the **auditing** of? Perhaps so, but the record reveals an assertion by the

Employees and no denial by Carrier that the incumbent of the younger position assumed full responsibility for the checking of certain ticket reports. This would tend to establish that there was a similarity in the work of the two positions insofar as the work done in connection with ticket reports and accounts was concerned and there is no question but that a substantial part of the duties of both positions consisted of apportionment work of equal quality or responsibility.

This Board has held that it is not necessary that the scales balance exactly in weighing the importance of the particular duties and respective responsibilities attached to two positions and further that, although the responsibilities of two positions are different, the positions are not necessarily of such unequal importance that they belong in different classes.

On the whole we believe within these principles that the record establishes that the two positions here involved are of similar kind or class as contemplated by Rule 10, and they being within the same seniority district, the claim should 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 Carrier violated the Agreement.

AWARD

Claim sustained.

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.