

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 the System Committee that the three newly created positions of Ticket Checker advertised for bids through bulletin dated March 4, 1946 by Auditor Freight and Passenger Accounts and rated at what has now become \$8.81 per day should properly have been rated at what has now become \$9.49 per day and that all employees adversely affected by reason of failure of the Railroad properly to rate these positions shall be compensated for all wage loss sustained effective with and subsequent to March 4, 1946.

EMPLOYEES' STATEMENT OF FACTS: Through Bulletin issued by Auditor Freight and Passenger Accounts under date of March 4, 1946, copy of which is attached hereto as Employees' Exhibit "A," newly created positions designated as Ticket Checker were established at rate which has now become \$8.81 per day with the following assigned duties:

"Duties consist of checking Auditor's Advice Stubs and Ticket Coupons against Agent's and Foreign roads ticket reports and such other related duties as may be assigned."

As indicated in Auditor Freight and Passenger Accounts Bulletin dated July 22, 1929, copy of which is attached hereto as Employees' Exhibit "B," there was formerly in existence a position of Ticket Checker, rated at what has now become \$9.49 per day, and with assigned duties as follows:

"Checking tickets honored against reports from foreign roads, tracing unreported tickets and handling correspondence pertaining thereto."

POSITION OF EMPLOYEES: The following rule is cited from agreement bearing effective date of December 16, 1943:

Rule 10: "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."

In response to a request for an increase in rates of pay and adjustment in the wages of certain clerical and related positions in 1926, the Western Pacific Railroad Company agreed with the Brotherhood of Railway Clerks that it would apply similar increases and make adjustments in the wages of certain positions along the lines as would be generally promulgated by the Board of Arbitration to which was submitted a request for an increase

representing clerks on the Western Pacific Railroad, and Mr. H. R. Fegley, Assistant to General Manager, representing the Management of The Western Pacific Railroad Company, in connection with

Case No. 2675-1946-Clks.

"Claim of the System Committee of the Brotherhood of Railway Clerks that the three newly-created positions of Ticket Checkers advertised for bids through bulletin dated March 4, 1946, by Auditor Freight and Passenger Accounts and rated at \$6.09 per day should allegedly have been rated at \$6.77 per day."

DECISION: Carrier does not agree with you that the duties of the positions here involved are comparable to those covered by the wage settlement of January 1, 1927. The incumbents of the present positions are not required to trace unreported tickets and handle correspondence pertaining thereto. They are merely required to check Auditors Advice Stubs and Ticket Coupons against agents and foreign roads ticket reports.

The rate of \$6.09 per day (present rate \$7.57 per day) is entirely adequate for the duties and responsibilities of the position, and I am not willing to authorize any increase.

Claim is declined.

Yours truly,

/s/ E. W. Mason—HRF

Vice President & General Manager.

cc: Mr. Thos. Kearns
Mr. D. C. DeGraff"

There is in effect an agreement between the Brotherhood of Railway Clerks and Carrier, effective December 16, 1943, which contains the following rule:

"Rule 10. The wages of new positions shall be in conformity with the wages for positions of similar kind or class in the seniority district where created."

POSITION OF CARRIER: Carrier's Statement of Facts shows beyond any doubt whatever that the duties required of the incumbents of the position here involved were extremely minor in character and responsibility and were filled with new employes with no previous railroad clerical experience and perhaps no clerical experience in any industry. There were no positions of this character in existence, therefore, it was necessary to establish a rate and it is Carrier's contention that an entirely adequate rate was created.

It is Carrier's contention that the minimum rate established by Supplement No. 7 to General Order No. 27 is not pertinent to the issue here involved. In 1944, minimum rates of pay were subject to the Wages and Hours Law and the rate of \$6.09 was considerably in excess of the minimum rate prescribed by that law.

It is the position of the Carrier that in establishing a rate of \$6.09 for each of the three positions of Ticket Checkers in the office of Auditor of Freight and Passenger Accounts, there was no violation of the Clerks' Schedule.

(Exhibits not reproduced).

OPINION OF BOARD: The facts herein are briefly as follows: In 1927, pursuant to an arbitration award, after a detailed survey of the positions on Carrier's line, a rate which has now become \$9.49 per day was agreed upon for the position of Ticket Checker. It appears that this position continued in existence until some time after July 22, 1929 but was subsequently abolished. On March 4, 1946 the Carrier advertised for bids on three positions of Ticket Checker at rate which has now become \$8.81 per day. It appears to be conceded that the old position of Ticket Checker was abolished several years prior to the bulletin of March 4, 1946.

Employees claim a violation of Rule 10 of the Agreement which 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."

There is a conflict on the question of similarity of duties and responsibilities of the old position of Ticket Checker and the new ones created in March 1946. The Employees contend that the three new positions are of similar kind or class as the formerly existing position of Ticket Checker, on which there was an especially adjusted basic rate, which should be used as the rate for these positions under the provisions of Rule 10. Even conceding for the purpose of argument that these new positions are of a similar kind or class as those in existence on January 1, 1927, it is difficult, if not impossible, for this Board to apply Rule 10 to such a situation. Rule 10 and similarly worded rules have been interpreted to be applicable only where there are existing positions of similar kind or class in the seniority district where created. This is an attempt to tie the rate of a new position to one which had been abolished several years prior. Such an interpretation would do violence to quite consistent holdings of this Board to the effect that the rule should be applied only where there is an existing position in the same seniority district of similar kind or class as the new position. See Award 2239. It is the opinion of the Board that the wisdom of such holding is hardly open to doubt for conditions, needs and responsibilities change through the years and many injustices would result if the rule were applied as contended for by the employees. In Award No. 2683 this Board held a carrier in violation of an identical rule when it fixed the same rate for a new position as was formerly fixed for one abolished three and one-half months prior to the creation of the new one saying:

"The rule contemplates that the wages of a new position shall be in conformity with the wages being paid employees in positions **presently** filled. It certainly was not the intent of the rule to conform the wages of a newly created position with those of a position no longer in existence."

We do not believe that the factor of the 1927 Arbitration Award would justify us in making an exception to this sound doctrine. Accordingly, we feel that the case should be remanded for the purpose of negotiating a rate for the positions.

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 should be remanded to the property for the purpose of negotiating a rate for the three positions involved.

AWARD

Claim remanded for the purpose of negotiating a proper rate for the positions involved.

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.