

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 of the Brotherhood of Railway Clerks that positions now designated as yard clerk at San Jose and currently rated at \$9.64 per day should properly be classified as train desk clerk at rate of \$10.14 per day and that all employees adversely affected by reason of failure of the Railroad properly to classify and rate these positions shall be compensated for wage loss sustained since February 1, 1945.

EMPLOYES' STATEMENT OF FACTS: In response to a request for an increase in rates of pay and an 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 in wages by the clerks employed by the Southern Pacific Company, which award was handed down April 16, 1927, and which provided that the increases granted on that road were to become effective as of January 1, 1927.

The award handed down by the Board of Arbitration provided for increases in pay ranging from three to seven cents per hour. As an alternative the Award also provided:

Section 11. "The sum of the increases granted may be distributed by joint action of the representatives of the carrier and of the employees in such manner as will establish just and equitable rates for each position in existence on the carrier's payrolls, both as between positions within each seniority district, and also as between seniority districts; provided the representatives . . . can mutually agree to said distribution. . ."

Section 11 was adopted as the method of applying the increase on the Western Pacific. Generally speaking, the amount of four cents per hour was applied as a horizontal increase, and one cent per hour per position was put into a pool to be drawn upon for adjustment of inequalities.

The Railroad furnished statements of duties covering practically all positions then in existence. These statements of duties were checked over by representatives of the Brotherhood. Through joint action, rates of pay were then agreed upon in consideration of the duties then required to be performed and constituting the substance of each position.

contemplated is through Mediation of negotiations in accordance with provisions of the Railway Labor Act.

(Exhibits not reproduced.)

OPINION OF BOARD: In 1927 the Carrier and Employees made joint checks of all positions on the Railroad and set up rates of pay for each. Among those positions was that of Yard Clerk at San Jose. In 1945 a joint check was made of this Yard Clerk's position and a detailed list of its duties and responsibilities was made up. That list shows many duties listed in the Yard Clerk position which are similar to or the same as those presently being performed by Train Desk Clerks on the Carrier's Western Division. On this basis, the Employees claim that the Yard Clerk at San Jose should receive the same rate of pay as that of Train Desk Clerks at the other points on the Carrier's Western Division.

The substance of the Employees' position is that the joint check made in 1945 indicates that the duties and responsibilities of the position had increased to such an extent as to, in effect, create a new position of a similar kind or class as that of Train Desk Clerk and, therefore, in accord with Rule 10 of the December 16, 1943 Agreement is should receive the same rate of pay as other positions of Train Desk Clerk in the same seniority district.

The Carrier denies that there have been any increased duties or responsibilities in the position of Yard Clerk at San Jose since 1927, and asserts that, even if there had been, the Employees' only remedy is to attempt to negotiate a new rate under the provisions of Rule 7. Carrier further argues that this is not in fact a new position, but one which is shown to have existed since 1927, or some 18 years before Employees conceive it is a new position within the Meaning of Rule 10 and hence Rule 10 is not applicable to the situation. Rules 7 and 10 of the 1943 Agreement read as follows:

"Rule 7. When there is sufficient increase or decrease in the duties and responsibilities of a position or change in the character of service required, the compensation for that position will be properly negotiated with the duly accredited representatives, but established positions shall not be discontinued and new ones created under the same or different titles covering relatively the same class of work for the purpose or with the effect of reducing the rate of pay or evading the application of these rules."

"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."

We cannot agree on all fours with the Carrier's reasoning in this matter. We can envision a situation where under the guise of adding duties and responsibilities to a position, the Carrier can in effect create a new position and rely on the provisions of Rule 7 to require negotiation, and thus defeat and nullify the requirements of Rule 10. Unfortunately the record is extremely meager on whether the duties of the position had increased since 1927. There is only the assertion in the Employees' Statement of Facts that Yard Clerks at San Jose do only Yard Clerk's duties as indicating what the duties of the position were in 1927, but it does not indicate specifically what those duties were. The Carrier merely denies generally that there were any changes in duties or responsibilities, but makes no comparison of the present duties and responsibilities of the position and the 1927 duties and responsibilities. True, the record does show that in 1945 at least some of the duties and responsibilities of a Train Desk Clerk's position were being performed by the Yard Clerk at San Jose, but there is nothing in the record to indicate whether or not such duties and responsibilities were being performed on this position in 1927. In the absence of specific proof we do not believe that we can indulge in a presumption that they were not being so performed, for duties and responsibilities of positions cannot at all times be apportioned with mathematical precision, there frequently is an overlapping.

Accordingly, we hold that this claim should be remanded to the property for further negotiation under Rule 7. If the parties fail to reach agreement,

the claim may be returned to this Board with the record more fully developed in accordance with the views expressed in this Opinion.

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 for further negotiation. If parties fail to reach agreement, it may be returned to Board with the record developed as indicated in Opinion.

AWARD

Claim remanded as indicated in Opinion.

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.