

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**

**GULF COAST LINES; INTERNATIONAL-GREAT NORTHERN
RR CO.; THE ST. LOUIS, BROWNSVILLE & MEXICO RY. CO.;
THE BEAUMONT, SOUR LAKE & WESTERN RY. CO.; SAN
ANTONIO, UVALDE & GULF RR CO.; THE ORANGE & NORTH-
WESTERN RR CO.; IBERIA, ST. MARY & EASTERN RR CO.;
SAN BENITO & RIO GRANDE VALLEY RY. CO.; NEW
ORLEANS, TEXAS & MEXICO RY. CO.; NEW IBERIA
& NORTHERN RR CO.; SAN ANTONIO SOUTHERN RY. CO.;
HOUSTON & BRAZOS VALLEY RY. CO.; HOUSTON NORTH
SHORE RY. CO.; ASHERTON & GULF RY. CO.; RIO GRANDE
CITY RY. CO.; ASPHALT BELT RY. CO.; SUGARLAND RY. CO.**

(Guy A. Thompson, Trustee)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(a) The Carrier violated the Clerks' Agreement at Corpus Christi, Texas, beginning April 27, 1945 when it abolished position of Car Record Clerk rate \$8.26 per day and assigned all of the duties of that position to Yard Clerk position paying only \$6.62 per day. Also

(b) Claim that the Carrier now be required to increase the Yard Clerk position to \$8.26 per day effective April 27, 1945 (plus subsequent general wage increases). Also

(c) Claim that all employes involved in or affected by the agreement violation be compensated for all losses sustained from April 27, 1945 until the violation is corrected.

EMPLOYES' STATEMENT OF FACTS: On April 16, 1943 the Carrier bulletined a position at Corpus Christi, Texas, designating it as a Yard Clerk with a rate of \$5.90 per day.

The Organization took exception to the title and rate of pay, contending the position should be designated a Car Record Clerk with rate of \$7.54 per day.

"Claim of the System Committee of the Brotherhood that:

(a) The Carrier violated the Clerks' Agreement at San Antonio, Texas, beginning September 24, 1945, when it abolished position of Utility Clerk No. 4, rate \$9.85 per day, and assigned the duties thereof to Utility Clerks Nos. 1, 2 and 3, with rates of \$8.25 per day. Also,

(b) Claim that the Carrier be required to increase the rates of Utility Clerks Nos. 1, 2 and 3 from \$8.25 per day to \$9.85 per day, effective September 25, 1945, plus subsequent wage increase. And,

(c) Claim that all employees involved in or affected by the Agreement violation be compensated for all losses sustained."

In the above case the Board ruled—"That there was no violation of the Agreement", and denied the claim.

When consideration is given to all the facts and circumstances involved in the case under consideration, specifically, the fact that neither Rule 52 nor Rule 50 relied upon by the Employees is involved or has been violated as alleged by the Employees; no position discontinued and a lower rated position created to do the work performed by the discontinued position; together with the "Opinion" and "Findings" of the Board as expressed in Awards Nos. 974, 2352, 2353 and 3420, it is clearly evident that the contention and claim of the Employees in the case under consideration is without basis.

Therefore, it is the position of the Carrier that the contention of the Employees be dismissed and the accompanying claim accordingly denied.

(Exhibits not reproduced.)

OPINION OF BOARD: April 13, 1943, Carrier bulletined a new temporary position at Corpus Christi, Texas, designating it as Line Desk Clerk at rate of \$6.45 per day. Three days later, on April 16, Carrier issued an amended bulletin designating the position as Yard Clerk at \$5.90 per day. Both bulletins described the duties of the position as "Handle Jumbo Record Book and exceptions from SP Connection cars interchanged." The employees claimed that the position was similar to that of Car Record Clerk at San Antonio, rate of \$7.54 per day and filed claim which was progressed to this Board resulting in Award 3272 upholding the claim of the employees. April 27, 1945, before the issuance of Award 3272, the position in question was abolished and the remaining duties thereof assigned to a lower-rated yard clerk's position. Employees claim a violation of Rules 50 (a) and 52 of the November 29, 1944, Agreement which rules provide as follows:

"Rule 50. Preservation of Rates

- (a) Employees temporarily or permanently assigned to higher rated positions or work shall receive the higher rates for the full day while occupying such position or performing such work; employees temporarily assigned to lower rated positions or work shall not have their rates reduced"

"Rule 52. Adjustment of Rates

- (a) Established positions will not be discontinued and new ones created under the same or different title covering relatively the same class or grade of work, which will have the effect of reducing the rate of pay or evading the application of these rules.
- (b) Where the duties of a particular position materially decrease in volume justifying abolishing the position, the remaining duties will be reassigned in accordance with Rule 50."

The Carrier contends that Award 3272 was in error and restated much of the contentions made in Award 3272 with respect to the similarity of the discontinued position and the Yard Clerk's position, reasserting that the duties of the position have always been and still are being performed by Yard Clerks. Carrier contends, therefore, that the remaining work of the

discontinued position was merely returned to the Yard Clerk position where it was formerly performed. Hence, there was no violation of the Agreement. Carrier contended further that, unfortunately, the basic factor in the Board's decision in 3272 seems to have been the fact that the discontinued position was assigned on a 306-day basis whereas Yard Clerk's positions at Corpus Christi were assigned 365 days per year.

In view of the Carrier's contentions, we have examined the record in Award 3272. From that examination, we conclude that said award was by no means controlled by the factor of the position being assigned on a 306-day basis. That was merely one among other factors pointed out by the Board in distinguishing the discontinued position from Yard Clerk positions at Corpus Christi, all of which were assigned on a 365-day basis. A review of the Award and the evidence upon which it was based indicates that due consideration was given to the evidence and contentions of both sides and the Board considering all of the circumstances surrounding the establishment of the position, felt that it was similar to the Car Record Clerk's position at San Antonio. We have no quarrel with the holding of that Award.

The record is meager with respect to the actual duties remaining on the position at the time of its abolishment. However, Carrier's General Superintendent in declining this claim by letter dated March 7, 1947, states, "It is the position of the Carrier that Award No. 3272 covered and was applicable to only the position there involved, i. e., the 306-day Yard Clerk position, which the Board ruled should have been established as a car record clerk. With the abolishment of that position any remaining work in connection with car record was returned to the Yard Clerks who have always performed this work." Carrier's Yardmaster in a memorandum concerning this matter stated that all remaining duties of the discontinued position were assigned to Yard Clerk No. 2.

We think it is a fair inference from the statements of Carrier's representatives that the duties of the position were generally the same at the time of its abolishment as at the time of its establishment, but that the volume of work had materially decreased.

Now then this Board has already held that the duties of the discontinued position were such as to warrant the payment of a higher rate than that being paid to Yard Clerk No. 2. In the absence of positive evidence that the remaining duties of the position were such that those higher rated duties were completely eliminated before the remaining duties were reassigned, it is apparent that the manner in which Carrier reassigned same was in violation of Rule 52 and 50 (a). An affirmative Award is required.

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 16th day of February, 1949.