

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Jay S. Parker, Referee

PARTIES TO DISPUTE:

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

**GULF COAST LINES; INTERNATIONAL-GREAT NORTHERN
R.R. CO.; THE ST. LOUIS, BROWNSVILLE & MEXICO RY.
CO.; THE BEAUMONT, SOUR LAKE & WESTERN RY. CO.;
SAN ANTONIO, UVALDE & GULF R.R. CO.; THE ORANGE
& NORTHWESTERN R.R. CO.; IBERIA, ST. MARY & EAST-
ERN R.R. CO.; SAN BENITO & RIO GRANDE VALLEY RY.
CO.; NEW ORLEANS, TEXAS & MEXICO RY. CO.; NEW IBERIA
& NORTHERN R.R. 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 correct rate of pay for the position of Cashier at Bishop, Texas, when it was established in July 1947 was \$10.63 per day. Also

(b) Claim that the rate of \$10.63 per day be made effective as of the date the position was established, plus all subsequent general wage increases and adjustments.

(All rates of pay referred to herein are those in effect in July 1947, and are subject to all subsequent general wage increases.)

EMPLOYEES' STATEMENT OF FACTS: On July 15, 1947, Carrier issued Bulletin No. 140 advertising new position of Cashier at Bishop, Texas, with a rate of \$9.86 per day. The duties as described on the bulletin are—

"Cashier duties and handling of reports and correspondence in connection with these duties. Successful applicant must be familiar with rates."

Rule 51 (a) provides a definite formula for arriving at the rate for a new position and requires that such rate "be in conformity with the wages for positions of similar kind or class in the seniority district where created."

In Award 3652 your Honorable Board interpreted the above provision of Rule 51 (a) to "mean going or prevailing wages."

up, but at a rate of \$9.60. There is nothing in Rule 51(a), however, saying that rates in the "immediate vicinity should be governing in setting new rates."

The very same rule 51(a) is involved in the instant case that was involved in the case covered by Award No. 3652, and it will be noted from the above quoted excerpt from "Opinion of Board" that the claim was denied for the reason that a majority of rates in effect were the same as rate set for the Woodsboro position. It will also be noted, in the last paragraph of the "Opinion of Board" in Award 3652, quoted above, that the Board stated the Carrier was "asking for trouble when it stood on its rights to fix the Clerk's rate at \$8.50 at Woodsboro, in view of all the facts", as "every other general clerk from Victoria to the North, to Driscoll to the South, was getting a higher rate." This is not true in the instant case. The Carrier has heretofore shown that every Cashier position east of Kingsville carries the same rate (\$13.88), that was fixed for the position at Bishop. In view of this and other facts, which are outlined throughout the Carrier's submission in the instant case and the decision rendered in Award 3652, the Board should, in order to be consistent in their decisions, sustain the Carrier's position in the instant case and deny the Employees' claim.

(Exhibits not reproduced.)

OPINION OF BOARD: The parties are not in entire accord with respect to all of the controlling facts of this case. Those about which there is no dispute will be stated at the outset of this opinion.

In July 1947, the Carrier bulletined the new position of Cashier, Bishop, Texas, rate \$9.86 per day. In the bulletin the duties of the position were described as "Cashier's duties and handling of reports and correspondence in connection with these duties." Successful applicant must be familiar with rates.

On the date in question there existed on the seniority district in which Bishop was located ten (10) other positions designated as Cashier with rates as follows: one (1) at \$10.81; 3 at \$10.63; 1 at \$10.34; 1 at \$10.22; 1 at \$10.05; 2 at \$9.86; and 1 at \$9.80. There were also in existence two (2) positions, classified by the Carrier as Chief Clerk-Cashier, one at Robstown and the other at San Benito, rated \$10.63 and \$10.79 respectively.

It is agreed the portion of the contract governing the fixing of the wage rate for the position involved is Rule 51(a), which reads:

"(a) 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."

Both parties to the dispute cite and rely upon, and in effect practically concede that Award No. 3652 of this Division, dealing with the same parties, the same rule of the contract, and the same seniority district, controls the disposition of the instant claim. The particular portions of the Opinion of such Award relied on read as follows:

"Careful study of the duties of these general clerks shows that twelve of the thirty-six were assigned approximately the same duties as those assigned at Woodsboro. Two of the twelve were rated at \$8.40, seven at \$8.50, one at \$9.60 and two at \$9.73.

"A majority, in other words, were at the same rate set for Woodsboro. Or, to put it in still another way, nine were the same or less; only three were higher.

"There is nothing in Rule 51(a) to indicate that the Carrier is obligated to set rates for new positions in conformity with the highest wages for positions of similar kind or class. To the contrary, such clauses are always interpreted to mean 'going' or 'prevailing' wages.

The Carrier was within its right in so interpreting the clause in the instant case."

The Carrier has furnished the Board with a rough sketch of its track between Houston and Brownsville with the locations of all stations located thereon having Cashier or Chief Clerk positions on the date of the creation of the new position at Bishop. This sketch shows five stations now having Cashier positions which are conceded to have been established since the Bishop position. While the Carrier urges the rate fixed for such positions should be taken into account, we have disregarded all arguments advanced with respect thereto and will make no further mention thereof for the simple reason that the only rates entitled to consideration or weight in determining whether there has been a violation of the contract are those in force and effect on the date the alleged violation occurred.

It must, we believe, be conceded that this Division is committed to the principle that under the rule here involved the question whether there were other positions of similar kind or class in the seniority district in which Bishop is located is one of fact to be determined from the record. Also, that in the determination of questions relevant thereto it is not material what title may have been given to the positions by the Carrier. Neither do such positions have to have equal responsibilities in the sense that duties and services are identical nor is it necessary that their duties require supervision of work of equal importance. (See Awards 1816, 2808, 3742.)

It is urged by the Carrier that the Chief Clerk-Cashier positions at Robstown and San Benito are not comparable to the Cashier positions and therefore should not be taken into account in attempting to ascertain the "going" or "prevailing" wages in the involved seniority district. However, its position on the point is not strenuously argued and we find it far from convincing. To illustrate, while they assert the incumbents of those positions, in addition to their duties as Cashiers, supervise the station force and assist the Agent in the handling of correspondence, they fail to positively charge the incumbents of Cashier positions at other stations do not do similar work. Moreover their ex parte submission merely states that the duties of the Chief Clerk-Cashier positions are not necessarily comparable to the straight Cashier positions. This, we believe, is highly significant. But that is not all. The Carrier's own bulletin, advertising the Chief Clerk-Cashier position at Robstown, stated its duties to be "Cashier duties and handling reports and correspondence in connection with this." We note that under the bulletins the duties of the Bishop and Robstown positions are identical. Almost as much can be said for the bulletin advertising the position at San Benito.

When tested by the principle to which we have heretofore referred we are convinced the foregoing facts and others, perhaps of less importance but nevertheless persuasive, to be found in the record not only warrant but compel a conclusion that the positions of Cashier and Chief Clerk-Cashier on this Division were of similar kind or class.

What has just been held necessarily compels the additional conclusion that at the time the position at Bishop was established the Carrier already had four (4) comparable positions in that seniority district with rates of \$10.63, one at \$10.81 and another (San Benito) at \$10.79. Heretofore we have noted there were six positions rated at less than \$10.63, only two of which were rated at \$9.86.

Thus it appears we are confronted with a far more perplexing factual situation than was involved in Award 3652 in determining what was the "going" or "prevailing" wage in the instant case. There was a definite majority of the positions involved were rated at the rate fixed by the Carrier for the position. Here only three (3) were rated at the rate assigned to the Bishop position. On the other hand, only six positions in the seniority district, not a majority, were rated as high as \$10.63, the rate claimed by the Brotherhood, and but four (4) of those carried that identical rate. Here eight (8) different rates were in force and effect. There we find but four.

Inasmuch as the parties both rely on Award 3652 as controlling we might perhaps, by giving what was there said and held the most liberal construction to which it could possibly be entitled, hold that such Award would sustain the granting of an affirmative Award in this case. However, we prefer what to us seems a more practical approach under the involved facts and circumstances.

We assume, without fear of challenge, the fact that as many as eight different rates are in force and effect in a seniority district which has but twelve comparable positions does not mean there is not a "going" or "prevailing" wage in such district for a newly created position. Therefore where, as here, that wage cannot be ascertained from a majority of the rated positions in the district, we see no sound reason why other pertinent considerations cannot be taken into account and become decisive of our decision in determining what rate should have been given such newly created position and in deciding whether the rate fixed therefor by the Carrier was in violation of the provisions of Rule 51(a).

Heretofore we have referred to the Carrier's rough sketch of its track. That sketch reveals the involved seniority district covers a distance of some 381.6 miles extending from Brownsville to Houston. It discloses that two (2) of the twelve (12) positions are located at stations on the extreme east end of the district. Eight of such positions are located at the extreme west end thereof. On the other hand, Kingsville, Robstown and Bishop are located in the center of the district and off to themselves.

Reference to another of the Carrier's exhibits discloses the population of the three towns to be as follows: Robstown 8000, Kingsville 9500, and Bishop 1000. On the other hand, the same exhibit reveals the total of carloads forwarded and received at each location for the first six months of 1947 to be Robstown 2129, Kingsville 2182, Bishop 2547. While it has been stated, for the purpose of emphasis we again call attention to the fact that the established rates at both Robstown and Kingsville were \$10.63.

When the matters to which we have referred in the preceding two paragraphs are given consideration along with the requirements of Rule 51(a) and the principle announced in Award No. 3652, we conclude that under the particular facts and circumstances of the instant case the "going" or "prevailing" wage for the Cashier's position at Bishop when established in July 1947 was and should have been fixed by the Carrier at \$10.63 and that its action in rating such position at \$9.86 resulted in a violation of the Agreement.

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 27th day of June, 1950.