

Award No. 4966
Docket No. CL-5023

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, COLORADO AND SANTA FE RAILWAY COMPANY

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

(a) Position No. 442, Sweetwater, Texas, known and classified as Car Clerk, rate of pay \$6.29 (now \$11.37) per day, shall be re-classified as position of Yard Clerk or Train Checker at rate of \$6.93 (now \$21.14) per day; and,

(b) Claim that Calvin L. Fixmann, James B. Layne and/or other employees occupying Position No. 442 shall be paid the difference between the rate of \$6.29 (now \$11.37) per day and \$6.93 (now \$12.14) per day from July 25, 1944, to date rate is corrected.

EMPLOYES' STATEMENT OF FACTS: On July 5, 1944, the Superintendent of the Southern Division of the G.C. & S.F. Railway Company established at Sweetwater, Texas, Position No. 442, titled Car Clerk, rate \$6.29 (now \$11.37) per day, hours 11:45 P.M. to 7:45 A.M. Subsequent investigation developed that this position was not assigned to perform the normal, ordinary and regular duties of a Car Clerk as the title would imply, but rather was assigned to check line-up track, check trains, check yards, weigh cars, pull waybills, order trains, figure tonnage for trains and fills, write up wheel reports, write up Government bill of lading reports, make Red Ball reports and call crews as well as other duties normally attaching to positions titled "Yard Clerk" or "Train Checker" in the same seniority district and rated at \$6.93 (now \$12.14) per day.

All other positions in the yard office at Sweetwater, Brownwood, Temple and Somerville on the same seniority district, some twelve in all, assigned similar duties and responsibilities on July 5, 1944, the date this position was established, are rated at not less than \$6.93 (now \$12.14) per day, except Car Clerk Position No. 443 at Sweetwater, the rate of which is also under protest and is being presented to this Honorable Board under a separate docket.

POSITION OF EMPLOYES: This dispute arose as a result of Carrier's refusal to comply with the requirements of the applicable agreement in establishing a new position at the yard office in Sweetwater, Texas. The Employees contend that the following rules in the agreement bearing effective date October 1, 1942, were violated when Position No. 442, titled Car Clerk,

then after a long lapse of time enter a claim for accumulations of pay."

In conclusion, the Carrier reasserts that the instant claim is entirely without support under the agreement rules and should be denied for the reasons heretofore expressed.

(Exhibits not reproduced.)

OPINION OF BOARD: A new position, No. 442, was established by the Carrier on July 5, 1944, under the title of Car Clerk, in its Yard Office at Sweetwater, Texas, and assigned the same rate of pay as Position No. 443, which had been newly established by the Carrier in the same office some two years before.

There is no difference in the facts, issues, arguments and principles involved in this case and those passed upon, determined, and decided by this Division in Award 4965. In fact the parties admit our decision in that case and the one involved in Award 4964 also this day decided, are entirely decisive of their rights under the instant claim. Therefore, based upon what was said and held in Awards 4964 and 4965 we hold that Position No. 442 was improperly classified and rated by the Carrier as a Car Clerk position and that claimant is entitled to retroactive reparation for the difference between the Car Clerk rate and the rate of a Yard Clerk commencing December 7, 1944, the date on which the claim was first presented to the Carrier.

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 disputes involved herein; and

That the Carrier violated the Agreement.

AWARD

Claim sustained to the extent indicated in the Opinion and the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 31st day of July, 1950.