

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

Dudley E. Whiting, Referee

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**PARTIES TO DISPUTE:**

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

**WESTERN WEIGHING AND INSPECTION BUREAU**

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

(a) The Bureau violated rules of agreement effective September 1, 1949 when it failed and refused to properly rate positions of Appraisers at Chicago, Illinois—as advertised by Bulletins Nos. 141, 142, and 143 of September 22, 1949—at \$15.62 per day.

(b) That the Bureau shall now be required to reimburse Claimants F. Morgan, G. L. Dunn and S. J. LaBarbera for the difference in rate between \$15.62 per day and \$18.14 per day applying to positions of Appraisers October 6, 1949, or date employees actually started to work on the advertised positions to and including November 16, 1949 when they were terminated.

**EMPLOYEES' STATEMENT OF FACTS:** On September 22, 1949 the Bureau issued three Bulletins Nos. 141, 142 and 143 and on October 6th the Bureau issued Awards Nos. 141-A, 142-A, and 143-A assigning the Claimants to these positions, (Employees' Exhibits Nos. 1 to 6 inclusive) described in each instance as Assistant Appraisers with Position Nos. 188, 133, and 189, rate \$15.62 per day. These positions were terminated with the close of business Wednesday, November 16, 1949.

On October 14, 1949 the Claimants directed a letter to the District Inspector, Mr. R. O. Wells, Jr., requesting an adjustment in rate to the full Appraisers' rate, and their request was declined by Mr. Wells on October 26, 1949. (Employees' Exhibits No. 14 and 15)

The General Chairman who directed a letter November 11, 1949 to District Inspector Wells calling his attention to the fact the bulletins advertised these as "New Positions" and under Rule 45 of our agreement, we were of the opinion the rate of pay should be equal to the positions of Appraisers, and the claim was again declined by Mr. Wells November 23, 1949. (Employees' Exhibits No. 16 and 17) There was a further exchange of correspondence with Mr. Wells as shown by Employees' Exhibits No. 18 and 19. The dispute was then referred to Manager F. A.

Employer's Exhibits 29 and 30 involve a further exchange of correspondence between General Chairman Bell and Manager Piehl.

Employer's Exhibit No. 31 is a request made by the General Chairman that Manager Piehl personally review this file so that the subject could be handled with him in conference on the General Chairman's visit to this office.

Employer's Exhibit No. 32 is an acknowledgment of the General Chairman's request that Manager Piehl review the file and personally discuss the subject with him when he visited our office.

Employer's Exhibit No. 33 is a letter written personally by Manager Piehl to the General Chairman outlining his position after the file had been reviewed by him and following conference held between the Manager and the General Chairman in this office on February 6, 1951.

Employer's Exhibits 34, Pages 1 and 2, and 35, Pages 1, 2, 3 and 4, are incorporated in this submission as information to your Honorable Board so that you will have before you the rules included within our counter-proposal that we desired to make applicable to our Appraisers which, as I should like to say again, occurred in October of 1947.

**POSITION OF BUREAU:** The Employees in this dispute have maintained that the three positions of Assistant Appraisers should pay the same rate as Appraisers on the assumption that the duties of the Assistant Appraisers were identical to the duties of the appraisers, which is not based on fact but is purely conjectural.

Assistant Appraiser positions were initially established by the Bureau in the year 1936 and since September 1945 were subject to bulletining. They were bulletined in May and September of 1946; May and October of 1947; May and September of 1948; May and September of 1949; and on each and every occasion the bulletins covering these positions referred to them as Assistant Appraisers. The duties throughout the years have been the same and notwithstanding the fact that the National Mediation Board certified the Brotherhood of Railway Clerks to represent Employees of this Bureau in April 1946, no question was raised regarding the rates of pay for these positions until after the bulletins issued in September 1949 had expired and the positions awarded to the Claimants, then they and they alone protested to District Inspector Wells the rate of pay, basing their protest that the percentage of work performed by them was by far and large that of an Appraiser; however, our District Inspector who has been in charge of Perishable Freight Inspection Service in the city of Chicago for over 35 years and who is thoroughly conversant with the work performed by these three employees when they were assigned to these positions, has stated positively that between 60 and 75% of their work was that of inspecting, which is work that is ordinarily performed by lower rated employees, namely, our Perishable Freight Inspectors.

We therefore submit to your Honorable Board that the claims in behalf of the Employees named are without merit and respectfully request that they be declined.

All data contained herein has been presented to the Employees.

(Exhibits not reproduced).

**OPINION OF BOARD:** Rule 45 of the Agreement effective September 1, 1949 provides:

"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."

The claim presents an issue as to whether three positions titled "Assistant Appraisers (Juice Grapes)" established September 22, 1949 should be paid the same rate as appraiser positions in accordance with that rule.

The employes present copies of bulletins describing the duties of various appraiser positions as well as those for the jobs in question and a complete statement of the services performed by occupants of such positions. The Carrier relies upon the use of such positions seasonally in prior years and an allegation that a large part of the duties of such assistant appraiser positions are analogous to those of Perishable Freight Inspectors. No description of the duties of such inspectors is provided.

It seems self evident that some inspection is inherent in all appraisal work. The critical factor in our view is that the assistant appraiser positions established required, as do all appraiser positions, that one "be able to determine and appraise, in dollars and cents, transportation damage from damage resulting from causes other than carrier's handling."

The fact that such positions had been used in prior years at a lower rate than that paid appraisers cannot govern the case in the face of the clear and unambiguous wording of the rule and in consideration of the fact that the positions were bulletined as new positions.

On the evidence presented the claim must be sustained. There is some question as to the rate of pay applicable to appraisers' positions at the time involved. That must be determined by the parties from a check of the payrolls and the claim will be sustained for the difference between the rate paid and the applicable appraiser's rate of pay.

**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 Employes involved in this dispute are respectively Carrier and Employes 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

The Agreement was violated.

#### AWARD

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon  
Secretary

Dated at Chicago, Illinois this 24th day of February, 1953.