

Award No. 6413

Docket No. CL-6113

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Donald F. McMahon, Referee

PARTIES TO DISPUTE:

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

CHICAGO & EASTERN ILLINOIS RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees that Carrier violated the Clerks' Agreement:

(a) By fixing a rate of \$7.47 per day instead of \$7.87 per day for newly created position of Yard Clerk, 11:30 P.M. to 7:30 A.M. (except Sundays and holidays) at Evansville, Indiana, per Bulletin No. 4, issued August 18, 1947;

(b) That correct rate of \$7.87 be established retroactive to date position was created and that R. A. Malkranz, who was initially assigned to the position, and his successors, if there be any, be compensated at the correct rate of \$7.87 per day for services performed.

EMPLOYEES' STATEMENT OF FACTS: Prior to August 18, 1947, the following positions were established in the Evansville Yards—Seniority District No. 32:

Name	Position	Hours of Assignment	Rate
A. Wardelman	Chief Yard Clerk	8:00 A. M. to 4:00 P. M.	\$8.81
A. O'Bryan	Yard Clerk-Hr. Lch.	7:00 A. M. to 4:00 P. M.	8.36
J. Freihaut	Yard Clerk	7:30 A. M. to 3:30 P. M.	8.36
A. Beatty	" "	7:30 A. M. to 3:30 P. M.	8.36
C. Werner	" "	3:30 P. M. to 11:30 P. M.	7.87
W. Griffin	" "	3:30 P. M. to 11:30 P. M.	7.87
V. Renschler	" "	3:30 P. M. to 11:30 P. M.	7.87
R. Doughty	" "	11:30 P. M. to 7:30 A. M.	7.87
M. Bartley	" "	11:30 P. M. to 7:30 A. M.	7.47

The duties assigned to the position occupied by Mr. Bartley, although classified by Carrier as Yard Clerk on the 11:30 P. M. to 7:30 A. M. assignment, rate \$7.47 per day, are those ordinarily performed by employes in

same rate, but such position actually performs comparable work on the same shift. It has further been established that the incumbent of the new position also assisted in performing certain clerk-caller work, the rate for which is likewise \$7.47 per day, and is the rate paid two other clerk-callers employed in this district. From an analysis of the record, there can be no doubt that the position in question did not perform duties requiring a greater degree of skill or responsibility, than did other positions receiving the same rate. Carrier submits that the rate applied to the new position was correctly established in accordance with Rule 70 of the effective agreement, as has been uniformly applied at all times in the past. The claim is fully without merit and should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: Carrier issued on August 18, 1947, its Bulletin No. 4, requesting bids for a new position of Yard Clerk, at Evansville, Ind., with hours 11:30 P.M. to 7:30 A.M., with rate of pay at \$7.47 per day. The Organization contends the rate should be \$7.87 per day, as the assigned work to be performed was not proper under the provision of Rule 70 of the current Agreement. They contend that R. A. Maikranz, first to be assigned the new position, and his successors, if any, be compensated and paid the difference between what they were paid at the rate of \$7.47 per day, and the higher rate of \$7.87 per day, since the position was first assigned.

Carrier first, contends the claim as alleged, should be dismissed by this Board and argues the claim was not properly progressed to this Board, and secondly, that the position and rate as established was of a "similar kind or class in the seniority district," as provided in Rule 70 of the Agreement, and such action in establishing the lower rate for the position was justified, and accordingly denied the claim as alleged.

As to Carrier's first contention that the claim should be dismissed for the reason the matter was not properly progressed to this Board. We have only to refer to the record itself, which shows the Organization has not unduly caused any delay in reaching a conclusion. The record is clear that delays were brought about by the dilatory manner in which Carrier handled correspondence between itself and the General Chairman.

The record is clear also that on August 20, 1947 the Local Chairman, W. D. Brothers, by letter notified the Superintendent for Carrier, just two days following the issuance of Bulletin No. 4, that the rate of \$7.47 was improper and should be rated at \$7.87 per day in accordance with the Agreement. Much correspondence transpired between the parties up to April 26, 1950, when Carrier through its Manager of Personnel finally declined the claim, by its highest designated officer. During this period the parties also made a joint check of the work performed on this new position. The record shows this claim was filed with this Board on January 18, 1952, or approximately twenty months after declination by the Carrier. Carrier was well aware the Organization did not agree with the rate established for the position, and we cannot say, after reviewing the record that twenty months is an unreasonable period to perfect an appeal to this Board. There are no time limitations in the Railway Labor Act, for the progression of claims to this Board, and we are well aware of the many awards made on this subject. In the instant case we must hold that the position taken by Carrier is without merit and should be denied. We are not concerned with what time limitations have been placed in other agreements between Clerks and other Carriers, and while we agree with Award 5096, as cited by Carrier here, it has no applicability to the case before us. In the case cited an Agreement contained a one (1) year limitation for appeal from the date claim was denied by Carrier's highest designated official. We have no such rule in the Agreement in the case before us.

As to the second contention by Carrier that it was justified in applying the rate of \$7.47 instead of \$7.87 per day we must go to the record for a solution of the differences between the parties.

The Organization states the rate of pay established was not comparable to that of other positions and class in the same seniority district, and urge the higher rate by comparison with duties performed by other yard clerks on the third shift at Evansville, who draw the higher rate of pay for comparable work, in the same seniority district.

Carrier bases its contention on the existing yard clerk position, and the new position it created required duties of a yard clerk, and set the pay rate at \$7.47, as comparable with the already existing yard clerk rate. While it is true that some of the duties are comparable to duties of other employees drawing a higher rate of pay, the same position requires some duties to be performed, for which other employees draw a lesser rate of pay.

This Board has by the very nature and provisions of the Railway Labor Act, authority only to interpret and apply the provisions of the Agreement, and rules, as agreed upon between the parties themselves. We have, as a Board, no authority to fix the rates of pay or to require what the duties of a position shall include. That is a problem for the parties to determine either by negotiation or by the provisions of the Agreement itself. Since there is no evidence that Carrier acted in a capricious manner, or willfully violated the provisions of the Agreement, we cannot substitute our judgment for that of Carrier. It is the right and duty of Carrier to establish and apply the rate of pay for work performed by its employees. Any disagreement between the parties can only be reached through negotiation. The record does not disclose that Carrier has misapplied the rate as established. As support for this holding we refer to Awards 5093, 5864, 1861, 1074.

After a thorough review of the many awards cited by the parties, many of which are comparable to the facts and circumstances as in the instant case, we must conclude the claim as presented, does not merit a sustaining award.

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

- a. Carrier's contention the claim be dismissed should be denied.
- b. There is no evidence that Carrier has violated the Agreement as alleged.

AWARD

Claim denied in its entirety.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 20th day of November, 1953.