

Award No. 6762  
Docket No. CL-6977

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

Jay S. Parker, Referee

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**PARTIES TO DISPUTE:**

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

**LOUISIANA & ARKANSAS RAILWAY COMPANY**

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

(a) The Carrier violated the current working agreement when it abolished position of General Clerk, hours 10:00 A.M. to 6:00 P.M., rate \$13.55 per day and established a new position of General Clerk, hours 11:00 P.M. to 7:00 A.M., rate \$13.55 per day, to assist Line Desk Clerk position rate \$13.70 per day.

(b) That J. H. Turner assigned to the 11:00 P.M. to 7:00 A.M. position of General Clerk on June 22, 1952 be paid the difference between General Clerk rate of \$13.55 per day and Line Desk Clerk rate \$13.70 from June 22, 1952 until corrected.

**EMPLOYEES' STATEMENT OF FACTS:** Prior to June 1952 Carrier maintained a position of General Clerk, 10:00 A.M. to 6:00 P.M., rate \$13.55. Duties assigned to the job were those of a regular Yard Clerk, handling home routes, disposition of hold cars and nobills and answering phone calls.

Effective June 1952 Carrier put on two additional trains, Nos. 55 and 56. Concurrently therewith, or on June 22, 1952, Carrier abolished the 10:00 A.M. to 6:00 P.M. General Clerk job and established a 11:00 P.M. to 7:00 A.M. General Clerk's job to assist the Line Desk Clerk. The duties of this 11:00 P.M. General Clerk were that of making 47 report, empty autos to Springhill report, engine report, bursting of train sheets and interchange sheets, calling crews, writing up scale tickets as well as regular duties of Yard Clerk. This particular work was formerly attached to the Line Desk Clerk's job.

**POSITION OF EMPLOYEES:** We quote for your ready convenience rules of the current working agreement that apply:

"Rule 46. Positions (not employes) shall be rated and the transfer of rates from one position to another shall not be permitted."

"Rule 47. (a) Employes temporarily or permanently assigned to higher rated positions shall receive the higher rates for the full day while occupying such position; employes temporarily assigned to lower rated positions shall not have their rates reduced.

positions to provide full service, and they do not carry or require the knowledge, capabilities and/or responsibilities as the generally recognized duties of a Line Desk position.

Rule 47, referred to in conference, as shown in Exhibit 14, provides:

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

"(b) A 'Temporary assignment' contemplates the fulfillment of the duties and responsibilities of the position during the time involved.

"(c) Assisting a higher rated employee due to a temporary increase in the volume of work does not constitute a temporary assignment."

Paragraph (c) takes care of any overflow assistance the General Clerk may have given the Interchange-Line Desk clerk. It is not applicable otherwise, as claimant was assigned to the position of General Clerk at a General Clerk's rate. He was not temporarily or permanently assigned as Line Desk Clerk or Interchange-Line Desk Clerk. The work assigned thereto was removed from the Line Desk Clerk but it was not the work, duties, responsibility or authority upon which the Line Desk or Interchange-Line Desk rates were based.

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It was evident in conferences held on the property that the various Organization representatives who had handled the matter were not in accord as to the propriety of progressing the claims. It is extremely unfortunate that the carrier has been drawn into this contest of opposing thoughts within the Organization; but in the protection of the company's interests it has been necessary for us to go into the matter in considerable detail in support of Carrier's position that the removal of higher rated work from a position, leaving only fill-in and routine miscellaneous work on the position, justifies making a change in the rate of pay and classification thereof.

Claim should be denied and you are respectfully requested to so hold.

All data contained herein is known or has been made known to representatives of claimant in conference or by correspondence.

(Exhibits not reproduced).

**OPINION OF BOARD:** Prior to dates involved in the claim the Carrier maintained a position of General Clerk, assigned hours 10:00 A. M. to 6:00 P. M. at Shreveport. Due to the inauguration of service by two new trains the starting time of the position was changed from 10:00 A. M. to 11:00 P. M. and immediately much of the work formerly performed on a Line Desk Clerk position, a higher rated position, was assigned to the General Clerk position and thereafter performed by the occupant thereof.

The Claimant's position is that due to the new train service the duties of the Line Desk Clerk position were increased to the extent new work of that character was required; that as a result it was necessary to relieve the incumbent of such position of some of the work he had formerly performed; that this was accomplished by assigning the newly established Clerk position a considerable portion of the work previously assigned to the Line Desk Clerk position; that the actual result of Carrier's action was to create a new position similar in kind or class to the existing Line Desk Clerk posi-

tion; and that hence Carrier was required to give such new position the same rate of pay as the Line Desk Clerk position under the provisions of Rule 48 (a) which read:

"The rates of pay for new positions shall be in conformity with the rates of pay for positions of similar kind or class in the seniority district where created."

On the other hand Carrier's position is that the work assigned to the General Clerk's position was purely clerical work which theretofore had been performed by the Line Desk Clerk position as incidental or fill-in work; that such work had nothing to do with the duties and responsibilities of Line Desk Clerk work; and that therefore Rule 48 (a) has no application.

At the outset it may be said, there is no question respecting the rule of this Division as to what constitutes "positions of similar kind or class" within the meaning of that term as used in Rule 48 (a) or other contract rules of like import. Long ago in Award No. 1861, with reference to a similar rule, we said:

"Under this rule it is necessary for a new position to receive the rate of an existing position to show that (a) it is in the same seniority district and (b) is of a similar kind or class. It does not have to have equal responsibilities in the sense that duties and services are identical, nor does it necessarily require supervision of work of equal importance in the sense just mentioned. It may still be of equal importance and responsibility."

To the same effect is Award No. 3447 which reads:

"The nature of the duties and responsibilities of a position are a necessary consideration in determining its kind or class. Even so, the duties of two positions do not have to be identical in detail in order for the positions to be of similar kind or class. The duties need only be of a similar kind or belong to similar classes.

A rule requiring the same rates for positions of similar kind or class is a much broader rule than one which refers to positions of 'similar work and responsibilities.'"

We are not disposed to encumber this opinion by detailing the facts of record on which the respective parties rely. It suffices to say that when all such facts are carefully analyzed and tested by the rule announced in the foregoing Awards we are convinced that on the date of the filing of the instant claim the involved General Clerk and Line Desk Clerk positions were positions of "similar kind or class" within the meaning of that term as used in Rule 48 (a). It may be admitted the probative facts on the crucial question involved are highly conflicting. Nevertheless we believe that conclusion becomes inescapable when it is kept in mind the Carrier concedes the correctness of statements made by two yard office employees to the effect the work assigned to the General Clerk position on and after the date of the involved change was work which had been performed by the Line Desk Clerk position from March 4, 1932, (as stated by one), and from May 19, 1936, (as stated by another), and that such work was work which had never been theretofore performed by a General Clerk or Yard Clerk.

**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 Agreement was violated by Carrier's failure to rate the involved position in conformity with its term.

AWARD

Claim sustained in accord with the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon  
Secretary

Dated at Chicago, Illinois, this 10th day of September, 1954.