

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Livingston Smith, Referee

PARTIES TO DISPUTE:

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

**THE DETROIT AND TOLEDO SHORE LINE
RAILROAD COMPANY**

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

(1) Two positions known as Desk No. 11 and Desk No. 12, established at Detroit, Michigan, September 7, 1949 and December 14, 1949, respectively, with daily rates of pay of \$9.75 and \$9.38, respectively were improperly rated; that they shall now be properly rated at not less than \$11.07 per day (plus general wage increases subsequent to said dates), advertised and assigned in accordance with the terms of the agreement between the parties hereto, effective January 1, 1943; and

(2) The employees adversely affected be compensated for all wage loss sustained, retroactive to September 7, 1949 and December 14, 1949, respectively.

EMPLOYEES' STATEMENT OF FACTS: On September 7, 1949, the Carrier issued Bulletin No. 38 reading as follows:

"There is a vacancy in the office of Supt. Car Service, Detroit, Michigan, as follows:

Title of Position —Desk No. 11
Hours of Service —8:30 A. M. to 12:30 P. M.
1:00 P. M. to 5:00 P. M.
Rate of Pay —\$9.75

Advertising period will close at 5:00 P. M., Sept. 12, 1949.
Bids in writing should be addressed to the undersigned.

/s/ W. P. O'Meara
Supt. Car Service".

On December 14, 1949, Carrier issued Bulletin No. 48, reading as follows:

All data contained herein has in substance been presented to the employees or their duly authorized representative and made a part of the particular question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: Petitioner here asserted that the Carrier failed and refused to comply with both the letter and intent of Rule 41 (a) when it established a rate of \$9.75 and a rate of \$9.38 for positions designated as Desk No. 11 and Desk No. 12, respectively.

Both of these positions, that is, Desk No. 11 and Desk No. 12, were in existence prior to May, 1949 at which time each of the same were abolished. Desk No. 11 was duly bulletined and filled as of September 13, 1949. The position designated as Desk No. 12 was duly bulletined and filled as of December 20, 1949. The Carrier established a rate of \$9.75 for the position designated as Desk No. 11 and \$9.38 for that position designated as Desk No. 12.

The Organization asserts that each of these positions were, within the meaning of Rule 41 (a), new positions and as such were required to be rated in accordance therewith, that is, that the rates of such newly created positions were to be in conformity with the rates for other positions of a similar kind or class. It was asserted that the proper rate for these new positions would be a composite rate of \$11.07 per day in view of the fact that Position No. 8 carried a rate of \$11.30, Position No. 9 a rate of \$11.07, and Position No. 10 a rate of \$10.83. It was further pointed out that the action of the Carrier here merely had the effect of bringing forward a rate for these positions that was in existence prior to their abolishment and that such action was clearly contrary to the intent of the parties that any rate for any newly established position would be in conformity with those paid positions of a similar kind or class in the seniority district where such newly created position was to exist.

The Respondent here asserts that the rates assigned the recreated positions designated as Desk No. 11 and Desk No. 12 were proper in that such rates were still in existence in view of the fact that they had been established by collective bargaining at a time when one such position was vacant, indicating that same was filled that the rates so negotiated were then to apply. The Respondent further asserted that this Board does not have the authority to establish a rate for a position for the reason that to do the same would abrogate Rule 59 of the effective agreement which reads as follows:

"Rates of pay for positions covered by this agreement which are now in effect shall become a part of this agreement, and shall remain in effect until changed as provided in the Railway Labor Act, as amended."

There can be no question but that those positions designated as Desk No. 11 and Desk No. 12 were abolished within the meaning of Rule 18 (a) and were duly recreated by bulletin and assignment, and as such are new positions within the meaning of Rule 41 (a) which reads as follows:

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

Rule 41 (a) requires that all new positions (which the positions designated as Desk No. 11 and Desk No. 12 are) be assigned a rate which shall be in conformity with the rates paid positions of a similar kind or class in the same seniority district. The Respondent here assigned rates of pay which were formerly those of positions designated as Desk No. 11 and Desk No. 12. These rates were abolished at the same time the positions were abolished.

They were not reactivated when these positions were re-bulletined and re-assigned. Rule 41 (a) contemplates that the rate of pay assigned to a new position, as such, shall be in accordance with the rates paid then existing positions.

The record here is inadequate to determine the complete job content or duties of any of the different designated positions, save and except that designated as Desk No. 8 (carrying the highest rate) has more duties and responsibilities than those assigned to any other Desk. The Board can reasonably assume that the duties assigned to Desk No. 11 and Desk No. 12 were not more complex and carried no more responsibility than those which had previously been assigned these positions prior to their earlier abolishment when they carried the lowest rates at the Station. This being true, the Board concludes that the proper rate to assign these positions at this time would be the lowest rate presently in effect and that the position most nearly of the kind and class within the same seniority district, within the meaning of Rule 41 (a), would be the rate of the position designated as Desk No. 10, daily rate \$10.83, which was the lowest rated position here after the earlier abolishment of the positions designated as Desks No. 11 and No. 12. We cannot find justification in the record to assign the requested rate of \$11.07 per day which is the rate of the position designated as Desk No. 9 and the mid-rate of the three remaining positions that existed just prior to the re-establishment of Desk No. 11 and Desk No. 12.

For the reasons hereinabove expressed, the Board is of the opinion and so finds and holds that the correct rate for the positions designated as Desk No. 11 and Desk No. 12 should be \$10.83 daily.

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 effective agreement.

AWARD

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

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 29th day of January, 1957.