

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Whitley P. McCoy, Referee

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 the Clerks' Agreement when on October 19, 1951, it unilaterally switched the Agreement rates of pay for Jobs Nos. 19 and 22, Traveling Agents at Dallas, Texas.

(b) Employees affected, namely R. F. Minster, occupant of Position No. 19, and W. W. Wooten, occupant of Position No. 22, and their successors, if there be any, be paid an additional day's pay for each day they were arbitrarily held off their regular positions retroactive to October 19, 1951, and continuing thereafter until the rule violation is corrected.

EMPLOYEES' STATEMENT OF FACTS: Effective with the Brotherhood's initial Agreement with the Bureau on September 1, 1949, there were employed in the Dallas Bureau Seniority District, headquarters Dallas, Texas, two Traveling Agents, to-wit:

Pos. No.	Title of Position	Head-quarters	Assigned to	Brief Description of Duties	Territory
19	Traveling Agent	Dallas	J. C. Bowen	Checking weight agreements, transit test weighing, freight inspection, track scale inspection, claim inspection, etc.	Ft. Worth Texas, and West of Ft. Worth, Tex.
22	Traveling Agent	Dallas	R. F. Minster	Same as No. 19	East Texas

As of October, 1951, Job 19 was rated \$16.31 per day and Job 22 was rated \$16.07 per day—24 cents per day differential. Mr. Bowen left service in September, 1951. The vacancy thus caused in his Position No. 19 was bulletined October 4, 1951, and assigned to Minster October 19, 1951, Employees' Exhibit Nos. 1 and 2.

is, no Traveling Agent is assigned to a territory and that, gentlemen of your Honorable Board, is a true and correct statement, notwithstanding the fact that not only in this case but in several others the Brotherhood through their duly accredited representatives are endeavoring to place territorial restrictions on our employes.

Gentlemen this claim is based entirely on fiction rather than fact. As we have stated, it has absolutely no merit whatsoever and the evidence presented herein shows that to be the case, therefore, in your deliberations there can be but one conclusion and that is this claim be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: This claim is based upon an alleged violation by the Bureau of Rule 42 of the Agreement between the Bureau and the Brotherhood, which reads:

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

Part (a) of the claim alleges a violation in the switching of the rates of pay for Jobs Nos. 19 and 22, Traveling Agents. Part (b) asks monetary recompense for R. F. Minster and W. W. Wooten, occupants respectively of those two Positions and for their successors if any.

The duties of the Traveling Agents in the various Positions are identical, and are described in the bulletins of vacancies as follows: "checking weight agreements, transit, test weighing, freight inspection, track scale inspection, claim investigation, etc." They each travel in the territory assigned to them, calling upon shippers and making the checks and inspections referred to. The simple issue of fact is presented as to whether each of Positions 19 and 22 had specific and different territories assigned to them, or whether the territory assigned to both positions took in the entire Dallas Seniority District. The claim of the Brotherhood is based upon the contention that Position 19 embraced Fort Worth and the territory west of Fort Worth while Position 22 embraced east Texas, east of Fort Worth. The Bureau, on the other hand, contends that there are no specific territorial assignments but that the entire Dallas Seniority District is the assignment of both positions.

The dispute arose from the following facts. One Bowen had held Position 19, at \$16.31. He vacated the job in September, 1951. The vacancy was bulletined as required by the Rules on October 4, and it was assigned to Minster October 19. The headquarters of this Position and also of Position 22 had been Dallas, but Bowen had habitually worked in Fort Worth and west of Fort Worth. Minster had held Position 22 at the rate of \$16.07 working east Texas, and his promotion to Position 19 created a vacancy in Position 22. This vacancy was posted and awarded to Wooten in line with his seniority. At the same time, the headquarters of Position 22 was changed to Fort Worth. This change of headquarters is immaterial to the dispute, as the Brotherhood admitted the right of the Bureau in that respect.

Upon Minster taking over Bowen's job of Position 19 he continued to travel the same territory and visit the same cities and firms that he had traveled and visited on his old job, that of Position 22. And the work that Bowen had done, on Position 19, in Fort Worth and west, was turned over to Wooten who now had Position 22. That those are the facts is not denied by the Bureau, though not expressly admitted. The Bureau's submissions and letters attached as exhibits are evasive as to these facts, the Bureau taking the position that regardless of where the Traveling Agents had actually worked their positions were coextensive with the Seniority District, and the Bureau was at liberty to assign them any territory it saw fit.

That each of these positions had by long practice been considered as embracing definite territory is quite clearly indicated by the Joint Statement of Facts signed by the parties, which reads:

" . . . it was agreed by the undersigned parties that the Traveling Agent assigned to Traveling Agent Position No. 22 repeatedly checked the same stations and accounts over a period of years and in addition any other stations that might be directed to him for checking. The same conditions as outlined above apply to Traveling Agent Position No. 19."

The Bureau seizes upon the clause "and in addition any other stations that might be directed to him," as sustaining its contention. But that clause does not justify the inference that such "other stations" were outside the general territory of the "same stations." This joint statement is utterly inconsistent with any idea that the two positions were indistinguishable as to territory, both covering the same stations. That the Bureau at the time so interpreted it is indicated by a letter written by the Bureau, after signing of the Joint Statement, in which the writer says: "The fact that one may perform the auditing in one particular area and another in some other area to me at least is unimportant."

That the two positions were regarded as having separate territories is indicated by a letter from Wooten appearing in the record, in which he states: "I do not have any facts other than the position No.'s and rate of pay on the two jobs in question were switched before I bid this job." In other words, at the time he bid on "Position 22" he knew that he was really bidding on Bowens' west Texas job with a new position number. This letter having been written by one of the claimants, and just prior to the submission to this Board in 1955, it might well be disregarded as a self-serving declaration by an interested party, except for one important fact. As soon as knowledge of this letter came to the Bureau through receipt of a copy of the Brotherhood's submission, Wooten wrote another letter, this time to the Bureau, and it is included in the Record as a Bureau exhibit. This letter is so remarkable that it is here reproduced in full:

"Fort Worth, Texas
November 26, 1955

Mr. B. E. Richardson:

With respect to the statement 'I knew at the time I bid this job, the position numbers and rate of pay on the two jobs had been switched in my letter of July 29th to General Chairman Bell.

I believe there is some misinterpretation in the way I intended this to be. What I really intended this to mean was that at the time I bid on position 19 I knew what the rate of pay was and I wanted the job and as far as I am concerned I have no complaints.

I agree that I did word this statement wrong and I would like very much to retract this statement as I had no knowledge of what had been done as far as the two jobs were concerned other than the headquarters of one of the jobs had been changed to Ft. Worth and that was the job I wanted. I doubt very much that I would have bid on this job if the headquarters would have been left in Dallas.

I was merely trying to put over to Mr. Bell that I had no complaints and that I was satisfied with both the job as well as the rate of pay, and I certainly did not intend this statement to be taken any other way.

(Signed) W. W. Wooten"

This attempt to retract, to explain away what he had said, to "interpret" language so clear as to require no interpretation, together with his statement that he "had no complaints and . . . was satisfied with both the job as well as the rate of pay," suggests serious questions. But it also clearly demon-

strated that he was not an interested party, that he was repudiating his claim, and that his prior letter therefore does not deserve the appellation "self-serving." The Record makes it clear that he switched to the side of the Bureau.

That the Bureau realized its case, as originally made, was not supportable, is strongly indicated by its changes of position throughout the Record. Throughout the correspondence in 1952, the Bureau claimed that it had filled the vacancies in Positions 19 and 22 strictly in accordance with the Rules, and had done no switching of Positions or rates. But in a letter dated March 26, 1953, the Bureau for the first time advanced the contention that Position 22 had been abolished and a new Position 22 bulletined on October 4. Four and a half months later, on August 12, 1953, the same representative of the Bureau writes that both Positions 19 and 22 had been abolished. No such contention had ever been made before. In 1955 the Bureau switched back to its prior position, for in its Ex Parte Submission filed Sept. 15, 1955, appear the statements: "In other words, Position No. 19 was the same after the bulletin was issued as it was prior thereto," and "Moreover, the rate of pay for Position No. 22 at the time it was advertised on October 4, 1951, was the same rate of pay that was in existence when this very same position was occupied by Mr. Minster." (Emphasis ours.)

Upon careful review of the entire record we can come to no other conclusion than that the job of Traveling Agent previously held by Bowen comprised the territory of Fort Worth and west of Fort Worth, and was designated Position No. 19, at the rate of \$16.31; that the job of Traveling Agent held by Minster prior to October, 1951, comprised the territory east of Fort Worth, and was designated Position No. 22, at the rate of \$16.07; that when Minster was awarded Position No. 19 on October 19, 1951, he continued to work the same job he had previously held, that job now being improperly designated by the Bureau as Position 19; that when Wooten was awarded Position No. 22 on October 19, 1951, he was in fact placed upon Bowen's old job which had been designated Position 19 and which was now improperly designated Position 22; that the Bureau unilaterally thus shifted the Positions and rates of the two jobs in violation of Rule 42.

It is quite true, as argued by the Bureau, that the rights of the parties are determined by the Rules. But it is also true that upon the question of what the Rules mean, practice is often of controlling importance. The prohibition of Rule 42 against transferring rates from one "position" to another requires a determination of what the parties meant by a "position." Positions may be coextensive with the entire seniority district, or they may be restricted to a particular area. See Award 7166. In this case we are satisfied that the intent of the parties, evidenced by long practice, was to restrict Positions 19 and 22 to particular geographical areas.

As to the remedy, "the usual award is for the difference of pay between the position held by the Claimant and the position wrongfully denied him." Referee Wyckoff, in Award No. 5306. Wooten, or his successor, if any, has been performing the work of Position 19 but has been getting the lower pay attached to Position 22. He is therefore entitled to the difference in pay between those two rates retroactive to October 19, 1951, and until the Bureau places him on his proper job. Minster has been receiving the pay he was entitled to under his bid for and award of Position 19, and he, or his successors, if any, is entitled to continue to receive that pay for as long as his seniority entitles him to that position and rate.

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.

AWARD

Item (a) of the claim is sustained; Item (b) is sustained to this extent: W. W. Wooten, or his successors, if any, is to be paid the differential in rates between Positions 19 and 22 retroactive to October 19, 1951, and until he or his successor is placed upon his proper job; R. F. Minster, or his successors, if any, is to continue to receive the rate of pay attached to Position No. 19 and to be given the duties properly attaching to that Position as set forth in the foregoing Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 3rd day of June, 1957.