

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Donald F. McMahon, Referee

PARTIES TO DISPUTE:

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

THE WESTERN WEIGHING AND INSPECTION BUREAU

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

(a) The Bureau violated and has continued to violate the Schedule Agreement effective September 1, 1949, when it failed and refused to properly rate Position No. 13, Laborer (Leadman), Omaha, Nebraska, as advertised by Bulletin No. 2, May 11, 1951, at \$1.479 per hour.

(b) That the Bureau now be required to establish for this position retroactive to July 15, 1954, rate of \$1.649 per hour.

EMPLOYEES' STATEMENT OF FACTS: The Bureau issued on May 11, 1951, their Bulletin No. 2 establishing "NEW POSITION" No. 13, Laborer (Leadman) at rate of \$1.479 per hour with duties and responsibilities as shown by Employees' Exhibit 1. The position at that time was assigned to N. P. Ericksen, Employees' Exhibit 2.

The Employees' Exhibits 3 and 4 will show Position No. 13 was again bulletined September 24, 1953, as Bulletin No. 2 showing Mr. Eriksen requesting leave of absence account illness and the position was assigned to the claimant, William H. Sutton. Mr. Eriksen later resigned.

Claimant contended this position was paying six cents an hour less than the other Leadmen's positions at Omaha, Employees' Exhibit 5.

Claim was formally filed with the Bureau's representative on July 15, 1954, as shown by Employees' Exhibit 6 wherein it was acknowledged the Organization had overlooked this difference in rate of pay in not handling the question at an earlier date and for that reason requested the adjustment to begin on July 15, 1954, the same date that claim was formally filed.

Employees' Exhibit 7 shows the Bureau declined the claim.

not the lower of the three rates but per contra was the middle rate and under Rule 45 which we must rely on there is no obligation on our part to establish a position at the higher rate when two or more rates are in effect for comparable positions, which, as stated, is exactly what the situation is and has been at Omaha, Nebraska; moreover, if we were to accept the principle advocated by the Brotherhood then every time a new position is established on this property and two or more rates of pay are in effect for comparable work then we would be expected to attach to that new position the higher of whatever rates of pay are in effect.

We submit that wherever a new position is established and comparable positions pay the same rate then at the time the new position is advertised the rate for that position should be and must be the same as other comparable positions at the location where the position is created but we maintain and rightfully so that where, as here, there are three different rates of pay for our employes all of whom perform the same class of work, we have a perfect right to select as we did in this case the second highest rate, or we could have if we wanted to established the position at the lowest Leadman's rate, but this we did not elect to do.

Gentlemen of your Honorable Board this claim definitely is without merit and must, therefore, be declined.

All data contained herein has been presented to the Employees.

(Exhibits not reproduced.)

OPINION OF BOARD: The record herein discloses that the Bureau established Position No. 13, by Bulletin No. 2, on May 11, 1951. The position, the same as involved in the claim before us was awarded to the successful bidder May 28, 1951. Due to illness of the holder of this position, the Bureau again on September 24, 1953, put out Bulletin No. 2 again calling for bids for the assignment of the position. On October 13, 1953, by issuance of its Bulletin No. 2, it awarded the assignment to the present claimant herein.

It is contended by the Organization that the Bureau violated the agreement between the parties by its failure to state the proper rate of pay in the bulletins covering the position. Actually the Organization is contending the position, since its inception, should be paid at a rate covering an additional six cents per hour, as alleged, and retroactive to July 13, 1954. The Organization relies on the provisions of the following rules, to support its position.

"RULE 42.—RATING POSITIONS. Positions (not employes) shall be rated and the transfer of rates from one position to another shall not be permitted."

"RULE 45.—NEW POSITIONS. 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 Bureau denies the contentions of the Organization, and relies on the provisions of Rule 45, of the effective agreement to support its position. Attention is called to the Board by the Bureau that the locale of the position involved is at Omaha. That Omaha is situated in the Kansas City Seniority District, as well as other cities, particularly St. Joseph, where four positions similar to Position 13 here involved, carry the same wage rate, and further

that said position is similar in all respects, and comparable to the rates of pay allowed in other cities in the same seniority district.

From a review of the record before us, and the many citations and Awards submitted by the parties, it appears to the Board that the question to be determined is: Did the Bureau in establishing a pay rate for the position involved, violate the provisions of Rule 45, in setting the rate as posted in the Bulletins? The record shows other similar positions, having the same pay rate as here, at other locations in the same seniority district exist, and such action as complained of here, is in strict conformity with the provision of the rule.

The record before us is not sufficient to support a sustaining award herein. The Opinion of the Board in Award No. 7624 is applicable here.

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 claim should be denied, since the Bureau did not violate the provisions of the Agreement as alleged.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 8th day of April, 1959.