

**Award No. 10129**

**Docket No. CL-10174**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION  
(Supplemental)**

**Albert L. McDermott, Referee**

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**PARTIES TO DISPUTE:**

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

**THE TEXAS AND PACIFIC RAILWAY COMPANY**

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

(1) That Carrier violated the Clerks' Agreement when on July 5, 1957, it established, rated and bulletined positions of General Clerk and Relief General Clerk, Addis, Louisiana, without regard to Rule 40 of the Clerks' Agreement.

(2) That the rate of the General Clerk positions at Addis be corrected to \$16.56 plus cost-of-living adjustment, retroactive to July 5, 1957, the date the said positions were established.

(3) That Mr. L. V. Dufour, occupant of General Clerk position X-1483; that W. H. Jones, III, occupant of position X-1484; that K. G. Goudeau, occupant of Relief General Clerk position, and/or their successors, if there be any, be paid the difference between the established rate of \$16.29 per day, plus cost-of-living Adjustment and the corrected rate of \$16.56, plus cost-of-living adjustment, retroactive to July 5, 1957.

**EMPLOYES STATEMENT OF FACTS:**

(1) That on July 5, 1957 by Bulletin No. 12, Superintendent Blassingame advertised position of General Clerk X-1483, Addis, Louisiana, with rate of pay \$16.29 per day, plus cost-of-living adjustment, working assigned hours of 5:00 A. M. to 9:00 A. M. and 10:00 A. M. to 2:00 P. M. daily, Monday through Friday with Saturday and Sunday as rest days. This position was assigned to Mr. L. V. Dufour by Superintendent Blassingame by Bulletin No. 12-A dated July 16, 1957. See Employees' Exhibits 1 and 1-a.

(2) On July 5, 1957 by Bulletin No. 13, Superintendent Blassingame advertised position of General Clerk X-1484, Addis, rate of pay \$16.29, plus cost-of-living adjustment, working assigned hours 3:00 P. M. to 7:00 P. M.—8:00 P. M. to 12:00 M. N. daily Thursday through Monday with Tuesday and Wednesday as rest days. This position was awarded to Mr. W. H. Jones, III by Superintendent Blassingame's Assignment Bulletin No. 13-A, dated July 16, 1957. See Employees' Exhibits No. 2 and 2-a.

to the employees or duly authorized representatives thereof and made a part of the particular question in dispute.

(Exhibits not reproduced.)

**OPINION OF BOARD:** The dispute involves the questioned rate of pay for positions of General Clerks and Relief General Clerk, Addis, Louisiana. The Carrier established two regular tricks of General Clerk and a Relief Assignment on such positions at Addis, Louisiana on July 5, 1957 at an established rate of \$16.29 per day, plus cost-of-living adjustment. Claimants seek a rate of \$16.56 per day, plus cost-of-living adjustment, retroactive to July 5, 1957.

Rule 40 of the Agreement provides:

**"Rates of Pay**

"The rates of pay for new positions will be in conformity with wages for analogous positions of similar kind and class in the seniority district where created; if no existing positions in the seniority district, then the rate of pay for the new position will be established with due regard to the rates attaching to comparable positions on other seniority districts."

In the seniority district of which Addis is a part, there is a general clerk listed at Plaquemine, Louisiana. This position was established on June 21, 1957 and is rated at \$16.29 per day. There is a claim concerning the establishing, rating and bulletining of this position pending before this Board. The only other General Clerks' positions in the district are at Shreveport, Louisiana. The Carrier in listing the kind of clerks employed at Shreveport gave descriptive titles to numerous categories of clerks. In one instance, however, it merely listed the name Clerks at a rate of \$16.56 per day. Claimants contend without contradiction that there are General Clerks at Shreveport rated at \$16.56 per day.

We recognize fully that mere identity by title is not a sufficient basis for a finding of similarity of kind or class. The duties of the position are of primary importance in determining its character.

The Carriers bulletin advertising the Positions in question stated in its Brief Description of Duties:

"Make yard check at Addis and at Port Commission Trackage at Port Allen; make Interchange Reports; keep Demurrage Records; make and handle waybills, freight bills, and Per Diem statements; and such other duties as may be assigned."

The positions established at Addis are analogous to the duties of a General Clerk. Such clerks at Shreveport (within the Seniority District) receive \$16.56 per day plus cost-of-living.

Award 1861 in dealing with a rule similar to Rule 40 said:

"Under this rule it is necessary for a new position to receive the rate of an existing position to show (a) it is in the same seniority district and (b) is of a similar kind or class. It does not have to have

equal responsibility in the sense that duties and services are identical."  
See also Awards 3447, 3485, 4125.

The Carrier states that the \$16.29 rate in the instant case was applied "for the reason that a clerical position formerly existed at Addis, which, if it had never been abolished, would have paid \$16.29 per day in July, 1957, due to the various general wage increases." Carrier also relies on the difference in population of Addis and Port Allen as compared to Shreveport and of the variance in the monthly average of cars handled, clerical units and Freight Revenue at Addis with similar activity at Shreveport to support its position. In the latter instance the difference in the size of the work forces at the two locations is disregarded. But even accepting all the Carriers' facts in the best favorable light, we do not think the arguments of the Carrier in this case are controlling. It is contended that the implementation of a decision in favor of Claimant would create untold difficulty for the Carrier. The words in the rule "in conformity with" would not provide a definitive yardstick. Webster may be of assistance at this point. He defines the phrase "to conform" to mean "to make or be like."

For the foregoing reasons, we find that the claim should be sustained.

**FINDINGS:** The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 Agreement.

#### AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 27th day of October, 1961.