Award No. 11078
Docket No. CL-9972

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John H. Dorsey, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES

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 219 as advertised by Bulletin No. 29, June 4, 1954, at $15.85 per day.

(b) The Bureau shall now be required to establish the correct rate of $17.11 per day subject to all subsequent National Wage Increase Agreements.

(c) The Bureau now be required to compensate Claimant H. G. Downs and/or his successors retroactive to June 4, 1954, and forward until this dispute is settled.

(d) The Bureau be required to again bulletin Position No. 219 at the correct rate so that senior employes can exercise their seniority accordingly.

EMPLOYES' STATEMENT OF FACTS: On June 4, 1954, the Bureau created NEW POSITION number 219, Inspector, Montgomery Ward and Company, and Sears Roebuck and Company, at $15.85 per day, which was assigned to Mr. H. C. Downs as shown by Employes' Exhibits One and Two. This new position was the result of a consolidation of positions number 49 that was assigned to H. C. Downs at Montgomery Ward and Company, and Position Number 157, that was assigned to W. D. Sevedge at Sears Roebuck and Company, which two positions were abolished with the close of business Sunday, June 6, 1954.

When the new position number 219 was established, investigation was started to determine if the actual duties were comparable to the Roving Freight Inspector's positions. The claimant furnished this Organization with his letter of June 30, 1954, submitted as Employes' Exhibit 13-B as

pay because it is and has been an established rate of pay throughout the years.

All data contained herein has been presented to the Employes.

(Exhibits not reproduced.)

OPINION OF BOARD: Under date of June 4, 1954, the Bureau bulletined a "New position", Position No. 219, with the title of "Inspector" with location at "Montgomery Ward and Company, and Sears Roebuck and Company, Kansas City, Missouri," plus "making loss and damage inspections at adjacent firms." At that time it abolished two positions of "Inspector"; one at Montgomery Ward, the other at Sears.

As of June 4, 1954 the Bureau had, in the same seniority district, two existing positions, Nos. 205 and 206, of "Roving Freight Inspector" in Kansas City, Missouri.

Petitioner alleges that the duties of Position No. 219 are similar to the duties of Positions Nos. 205 and 206 and the wages for the "new position" No. 219 should be in conformity with the wages for Positions Nos. 205 and 206. It prays that the Board so decide and award the initial holder of Position No. 219, H. C. Downs, and his successors in that position the difference in wages each received while in Position No. 219 and what each would have received had the wages been in conformity with the wages for Positions Nos. 205 and 206. In addition, petitioner prays that the Bureau be required to again bulletin Position No. 219 "at the correct rate so that senior employes can exercise their seniority accordingly."

The pertinent provision of the Agreement reads:

"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 issue before the Board is whether the duties of Positions Nos. 219, 205 and 206 are "similar kind or class." We are concerned, therefore, only with comparing the duties of these particular positions to resolve whether they are "similar." We are not concerned with job titles or the duties of the abolished positions.

The **de facto** duties of Position No. 219 are found in a Joint Statement of Facts, executed by the parties on October 5, 1955, which is as follows:

"JOINT STATEMENT OF FACTS

"OF

DUTIES AND RESPONSIBILITIES ASSIGNED TO POSITION NO. 219, INSPECTOR, MONTGOMERY WARD AND COMPANY — SEARS, ROEBUCK AND COMPANY, KANSAS CITY, MISSOURI, NOW ASSIGNED TO H. C. DOWNS.

"It is agreed by the parties signatory hereto that the duties and responsibilities of the position referred to above include the following:

"Checking LCL and C/L freight bills and bills of lading for proper descriptions. Making inspections on shipments improperly described, correcting the billing on same, and issuing Form CS-47 corrections.

"Obtaining weights on C/L shipments which had not been track scaled, also verifying shipper's weights as shown on C/L waybills or bills of lading on cars which had not been track scaled nor moving under Weight Agreements.

"Investigation of claims pertaining to description and weight.

"Calling on the above firms and instructing them as to the proper method of describing their shipments in accordance with Classification or Tariff descriptions.

"Calling on the above firms in regard to marking and packing, also non-regulation containers or packages as found in the shipping or receiving houses, which do not comply with rules in C.F.C. No. 20 and U.F.C. No. 3.

"Making inspections at the above firms on cars as to their condition, also the loading, blocking and bracing of same, making suggestions as to the method of loading or bracing. Making loss and damage inspections at the above firms and adjacent firms.

"In addition to the above, it is agreed by the parties signatory hereto the letter of June 30, 1954, written by Mr. H. C. Downs outlines his duties and knowledge of work and will therefore be attached hereto and become part of this joint statement of facts.

"Signed this 5th day of October, 1955

"FOR THE BROTHERHOOD OF RAILWAY CLERKS
FOR THE WESTERN WEIGHING & INSPECTION BUREAU

/s/ L. C. Bell
General Chairman

/s/ F. C. Schumacher
District Manager"

Incorporated in the foregoing by reference thereto is a letter of Claimant in which he describes his duties in Position No. 219, which reads:

"Kansas City, Mo.
"Mr. L. C. Bell, General Chairman
Brotherhood of Railway Clerks
Kansas City, Mo.

"June 30, 1954
File 45-28 H.C.D.

"Dear Sir and Brother.

"Referring to your file above relative to your intention to try and secure a higher rate of pay for position 219 recently bulletined. I first wish to direct your attention to the position as bulletined which does not completely cover the activities required.

"Several years ago when it was the practice to use trap cars in delivery service all the receipts were checked against listings and receipts mailed to agents. This is now obsolete as the L.C.L. freight is now delivered by contract draymen or railway trucks who give the railways a receipt and take a receipt from the consignee.

"The other activities are performed other than the adjacent outside calls for loss and damage inspections which I am advised would be handled by other loss and damage inspectors.

"In the many years as an industry inspector it has generally been accepted by the railroad employes and these firms that anything which pertains to railroad business should be handled by the inspector and is usually referred to the inspector for handling.

"My experience as a Roving Inspector furnished a general knowledge of the various duties of a Roving Inspector, Pick Up and Delivery Inspector and Loss and Damage inspectors. The position at Sears Roebuck Co. and Montgomery Ward Co. require the ability and also require the performance, with less time allotted to each activity, of all these positions except that part which pertains to checking contract drayman warehouses.

"There is no material difference in the work at Sears Roebuck Co. and Montgomery Ward Co. other than the combination of the two places make more of it. Checking inbound carloads at time set for condition of load and bracing and making and reporting loss and damage inspections require most of the time which must be handled at the convenience of the firms, the other activities which can only be performed as required consist in a general way of Investigation of claims, Classification inspections. Matching OSD's. Assist revising clerks and roving inspectors in classification and weights. Inspection of part unload cars for proper condition to forward. Handle with shipper through these firms for better car loading and bracing. Assist the firms traffic departments with classification and tariff descriptions. At Montgomery Ward Co. furnish correct classification description on carload consolidated shipments before shipped.

"These and various other items which are handled from time to time all of which are sandwiched in between time spent in checking condition of inbound car loading and bracing and making loss and damage inspections which is given priority, therefore, it is hardly possible to designate the time spent on each. In complying with your letter have endeavored to furnish you with the information requested, however it should be understood that I was fully cognizant of all of the conditions of the position and rate of salary when I placed my application.

"Yours truly

/s/ H. C. Downs
Inspector"

The **de facto** duties of Positions Nos. 205 and 206 are set forth in identical letters, bearing same date, from the occupants of those positions. We set forth one of the letters:

"KANSAS CITY MISSOURI

JANUARY 23, 1951

"Y-DAC
Supervision

"Mr. W. J. Zenk,
District Manager,
Kansas City, Mo.

"Following are the duties performed by me:

"Checking L.C.L. and C/L waybills and bills of ladings for proper descriptions. Making inspections on shipments improperly described, correcting the billing on same, and issuing Forms CS-23 or CS-47 corrections.

"Obtaining weights on C/L shipments which had not been track scaled, also verifying shipper's weights as shown on C/L waybills on cars which had not been track scaled nor moving under Weight Agreement.

"Investigation of claims pertaining to description and weight.

"Calling on shippers and instructing them as to the proper method of describing their shipments in accordance with Classification or Tariff descriptions.

"Calling on shippers in regard to marking and packing, also, non-regulation containers or packages as found in the various freight houses, which do not comply with rules in C.F.C. No. 19.

"Inspecting Railroad Track Scales and issuing Form CS-51 report on same, also counting scale tickets and verifying a percentage against the billing.

"Making inspections at industries on cars as to their condition, also the loading, blocking and bracing of same, and tracing to destination for out-turn check.

"Respectfully,

"D. A. Cloheesy
Roving Freight Inspector

"Position No. 205 — Roving Freight Inspector — $14.75 per day."

While reasonable men may differ as to what is "similar," a comparison of the documents quoted, above, is persuasively convincing that the duties of the new position, No. 219, are "similar" in kind and class to the duties of Positions Nos. 205 and 206.

We will sustain the claim.

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 Employes involved in this dispute are respectively Carrier and Employes 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 Bureau 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 25th day of January 1963.