

Award No. 15220
Docket No. CL-15420

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Arthur W. Devine, Referee

PARTIES TO DISPUTE:

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

**CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL 5723) that:

1. Carrier violated the Clerks' Rules Agreement when it arbitrarily and unilaterally established a new position of Timekeeper in Seniority District No. 51 without an agreement covering its rate of pay.

2. Carrier shall now be required to rebulletin Timekeeper Position No. 2037 to employees in Seniority District No. 51 at a rate of \$20.424 per day.

3. Carrier shall now be required to compensate James R. Minkler, the present occupant of Timekeeper Position No. 2037, his successor or successors if there be any, for the difference between the arbitrary rate established on the position — \$19.5384, and \$20.424, for each day subsequent to April 21, 1964 that the violation continues. Reparation due the employee or employees shall be determined by joint check of Carrier's payroll and/or other records.

EMPLOYEES' STATEMENT OF FACTS: Seniority District No. 51 covers Extra Gang Timekeepers, Lines East. The January 1, 1964 roster for District No. 51 shows five employees holding seniority in that district; however, from some time in 1962 until April 21, 1964 there were no positions of extra gang Timekeeper in effect in the district.

The last such position in effect in District No. 51, according to the Employees' records, was established April 18, 1962 and was subsequently abolished without benefit of bulletin notice. Consequently, the Employees have no knowledge as to the date of abolishment other than that it was abolished some time during 1962.

Date of Adjustment	Hourly Adjustment	Daily Adjustment	New Rate of Extra Gang Timekeeper Positions
Nov. 1, 1957	5c increase	.40 increase	17.036
May 1, 1958	4c increase	.32 increase	17.356
Nov. 1, 1958	7c increase	.56 increase	17.916
Nov. 1, 1958	1c increase	.08 increase	17.996
Nov. 1, 1959	3c increase	.24 increase	18.236
May 1, 1960	1c increase	.08 increase	18.316
July 1, 1960	5c increase	.40 increase	18.716
Feb. 1, 1962	4c increase	.32 increase	19.036
May 1, 1962	6.28c increase	.5028 increase	19.5384

Therefore, as of April 9, 1964 the negotiated rate of pay for Extra Gang Timekeeper positions was \$19.5384, consequently when Extra Gang Timekeeper Position No. 2037 was bulletined on April 9, 1964 the rate of pay applied thereto was the negotiated rate of \$19.5384 per day. Copy of Bulletin No. 1 dated April 9, 1964 advertising Extra Gang Timekeeper Position No. 2037 is attached hereto as Carrier's Exhibit A.

Also attached hereto as Carrier's Exhibits are copies of the following letters:

Carrier's Exhibit B — Letter written by Mr. S. W. Amour, Assistant to Vice President, to Mr. H. V. Gilligan, General Chairman, under date of August 7, 1964.

Carrier's Exhibit C — Letter written by Mr. Amour to Mr. Gilligan under date of January 27, 1965.

Carrier's Exhibit D — Letter written by Mr. Amour to Mr. Gilligan under date of February 4, 1965.

(Exhibits not reproduced.)

OPINION OF BOARD: Carrier's contention that the claim, in behalf of the named Claimant's "successor or successors" is improper under Article V is without merit. See Award 14088 quoting Decision 19 of the National Disputes Committee, and Award 14966 involving the present parties.

Concerning the merits, Carrier established Timekeeper position in Seniority District 51, fixing the rate of pay for the positions by taking the rate for previous such positions and bringing it up to date with subsequent general wage increases.

The Organization contends the Carrier violated Rule 18 in so fixing the rate and claims a \$20.424 rate based on an alleged similar position in another seniority district.

Carrier's bulletin established the Timekeeper position as a "New position" thereby making Rule 18 applicable. In Award 15166, involving the present parties we held:

"... Rule 18, clearly required Carrier to establish the rate of pay: (1) 'in conformity with rates for positions of similar kind or class in the seniority district where created;' or, (2) in the absence of such an existing position 'by agreement between the Carrier and the General Chairman.' Award Nos. 2239, 3555, 4127, 15058. Carrier failed to comply with either of these prescriptions. Consequently, it violated the Agreement."

Since the rate here fixed by the Carrier was not based on existing similar positions in the same seniority district and the rate was not otherwise established by agreement as required by Rule 18, we find that Carrier violated the Agreement as alleged in paragraph (1) of the claim.

We cannot, however, sustain paragraphs (2) and (3) of the claim. Confining ourselves to the claim as referred to the Board, as we are bound to do, the rate there claimed, which is based on the rate paid an alleged similar position in another seniority district, is contrary to Rule 18 and cannot be granted. Award 14966 involving the present parties. Further, in Award 15058, also involving the present parties, we held:

"In paragraph 2 of the Claim the Organization prays that Claimants be paid the difference between the rate of pay unilaterally set by Carrier and a rate of \$21.6068 arbitrarily set by the Organization. We cannot accept the Organization's arbitrary rate. The rate can be established only through negotiations between the parties. We, therefore, will dismiss paragraph 2 of the Claim."

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 Employee involved in this dispute are respectively Carrier and Employee 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

Paragraph 1 of Claim sustained.

Paragraphs 2 and 3 of Claim denied.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION**

**ATTEST: S. H. Schulty
Executive Secretary**

Dated at Chicago, Illinois, this 30th day of January 1967.

**LABOR MEMBER'S DISSENT TO AWARD 15220,
DOCKET CL-15420**

In denying the remedy requested by the Employees and failing and refusing to fashion a remedy the Referee failed to properly adjust the dispute before him.

I therefore dissent to Award 15220, Docket CL-15420, which correctly finds a violation of the Agreement commencing April 21, 1964, but fails to provide a remedy and thus allows the Carrier to violate the contract with impunity.

D. E. Watkins
Labor Member
2-27-67