

NATIONAL RAILROAD ADJUSTMENT BOARD
Third Division

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT
HANDLERS, EXPRESS AND STATION EMPLOYES
ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY**

DISPUTE.—

"Claim of Mont. L. Proffit for rate of \$5.02 per day, retroactive to July 31, 1931, for position of third trick yard clerk at Chaffee, Missouri."

FINDINGS.—The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds 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.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

The parties to said dispute were given due notice of hearing thereon.

Prior to July 31, 1931, there were two positions employed on third trick at Chaffee, Missouri. One with title of weighmaster-yard clerk, rate \$5.42 per day, and the other with title of yard clerk, rate \$4.30 per day. On July 31, 1931, the position of weighmaster-clerk, rate \$5.42 per day, was discontinued and the remaining position of yard clerk, rate \$4.30 per day, continued.

The employees claim that the major duties and responsibilities of former position of weighmaster-clerk were assigned to the remaining position of yard clerk.

The carrier contends the diminished service at that point did not warrant the continuation of the position of weighmaster-clerk, and that the remaining yard clerk did not in fact assume the duties and responsibilities of the former position of weighmaster-clerk.

An agreement bearing effective date of September 15, 1924, exists between the parties and employees cite Rules 55 and 83 in support of claim. These rules read:

RULE 55

"Employees temporarily or permanently assigned to higher rated positions shall receive the higher rates while occupying such position; employees temporarily assigned to lower rated positions shall not have their rates reduced. A 'temporary assignment' contemplates the fulfillment of the duties and responsibilities of the position during the time occupied, whether the regular occupant of the position is absent or whether the temporary assignee does the work irrespective of the presence of the regular employee. Assisting a higher rated employee due to a temporary increase in the volume of work does not constitute a temporary assignment."

RULE 83

"Established positions shall not be discontinued and new ones created under same or different titles covering relatively the same class of work serving the purpose of reducing the rate of pay or evading the application of these rules."

Evidence shows a joint check was made by the parties in October 1931, covering duties performed on the particular position involved, following which

an agreement was reached between the General Chairman and Superintendent to increase rate of this position to \$5.02 per day as result of such joint check, which was confirmed by Superintendent in letter of October 30, 1931, reading in part:

"Further in connection with our conference today relative to former weighmaster-clerk position at Chaffee, rate \$5.42 per day.

"As per agreement, this position, which is now occupied by Mont L. Proffit, will be known as bill and yard clerk, rate \$5.02 per day, retroactive from time change was made July 31st, 1931, when rate of \$4.30 was paid this man. It is understood this position will not be rebulletined." * * *

This settlement was later countermanded by the Superintendent's superiors.

While this Division recognizes that local officials are not authorized to place binding interpretations on schedule agreements, it does find that the preponderating evidence as result of joint check before mentioned warranted the establishment of rate of \$5.02 per day on this particular position and justified the agreement reached between the Superintendent and General Chairman.

AWARD

Claim sustained.

By Order of Third Division:

NATIONAL RAILROAD ADJUSTMENT BOARD.

Attest:

H. A. JOHNSON, *Secretary*.

Dated at Chicago, Illinois, this 31st day of March 1936.