

NATIONAL RAILROAD ADJUSTMENT BOARD
Third Division

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT
HANDLERS, EXPRESS AND STATION EMPLOYES**
THE COLORADO AND SOUTHERN RAILWAY COMPANY

DISPUTE.—

"(a) Claim of H. S. Unter for \$325.51, representing the difference between the Fire & Accident Prevention Inspector's rate of \$215.00 per month and Stenographer's rate of \$129.59 per month, during time he was used to perform duties formerly assigned to and performed by Fire & Accident Prevention Inspector between December 14, 1931, and May 1, 1933.

"(b) Request that Mr. Unter be paid for each day lost from March 20, 1933, to November 1, 1933, account assigning him to work four (4) days per week during this period."

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

The carrier and the employe involved in this dispute are respectively carrier and employe 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.

The parties jointly certified the following statement of facts and the Third Division so finds:

"(a) Prior to December 1, 1931, there existed in the office of Chief Engineer at Denver, Colorado, a position designated as 'Fire & Accident Prevention Inspector,' rate of pay \$215.00 per month. This position was held by Mr. H. S. Unter.

"On December 1, 1931, the position of Fire & Accident Prevention Inspector was abolished, and on December 14, 1931, Mr. Unter was assigned to a Stenographer position carrying a rate of pay of \$129.59 per month.

"After the position of Fire & Accident Prevention Inspector was abolished, effective with the close of business Dec. 4, 1931, the incumbent was transferred to a stenographic position on Dec. 14, 1931, at a basic monthly rate of \$129.59.

"The following duties in connection with fire and insurance matters were handled by Mr. Unter as Stenographer:

"1. Checking Superintendents' monthly reports and other records of any changes in facilities that require changing in insurance and writing letters to the Insurance Company covering such changes.

"2. Checking of fuel oil, cotton, treated lumber at the plant, and rolling equipment in the shops, and making reports to the Insurance Company covering changes.

"3. Checking invoices from Insurance Companies and making vouchers and bills, also bills against the Texas Lines for their proportion.

"4. Keeping a record of all fire losses and reporting same to the Insurance Company, including the making of claims and also making monthly report of fire losses to the Insurance Department of the Burlington, also accounting features in connection with insurance matters.

"Mr. Unter continued to handle the above duties until May 1, 1933. After that date all insurance matters were removed from the Stenographers' position, except the dictation of letters to him and the typing of vouchers and bills.

"(b) Effective March 20, 1933, Mr. H. S. Unter was assigned to work four (4) days per week, and was paid for only four days."

There is in evidence an agreement between the parties bearing effective date of July 1, 1924, and the petitioner cites and relies upon the following rules in support of claim:

Claim (a).—

"RULE 53—PRESERVATION OF RATES ON ASSIGNMENTS

"Employees temporarily or permanently assigned to higher rated positions shall receive the higher rates while occupying such positions; 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. Assigning a higher rated employee due to a temporary increase in the volume of work does not constitute a temporary assignment."

"RULE 55—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. If no position of similar kind or class exists in the seniority district where created, comparison shall be made with positions in other seniority districts."

Claim (b).—

"RULE 48—DETERMINING DAILY RATE

"Employees covered by groups (1) and (2), Rule 1, heretofore paid on a monthly, weekly, or hourly basis shall be paid on a daily basis. The conversion to a daily basis of monthly, weekly, or hourly rates shall not operate to establish a rate of pay either more or less favorable than is now in effect.

"Nothing herein shall be construed to permit the reduction of days for the employees covered by this rule below six (6) per week, excepting that this number may be reduced in a week in which holidays occur by the number of such holidays."

"RULE 70—DURATION OF AGREEMENT

"This agreement shall be effective as of July 1, 1924, and shall continue in effect until it is changed, as provided herein or under the provisions of the Transportation Act, 1920. Should either of the parties to this agreement desire to revise or modify these rules, thirty (30) days' written advance notice containing the proposed changes shall be given and conference held on date mutually agreed upon.

"All schedules and agreements previously in effect are hereby cancelled."

The Carrier represents—

*Claim (a).—*That following the abolishment of position of Fire and Accident Prevention Inspector, Mr. Unter was assigned to and accepted position of Stenographer; that he was not temporarily assigned to a lower rated position and such action was not in violation of Rule 53.

Also, that Rule 55 is not applicable, because Mr. Unter was assigned to an "Existing" and not a "New" position.

*Claim (b).—*On account of the decrease in work and to avoid force reduction, position occupied by Mr. Unter was assigned to work four days per week.

The Third Division finds—

*Claim (a).—*The evidence does not sustain petitioners' claim.

*Claim (b).—*Assigning Mr. Unter to four days per week was contrary to the provisions of Rule 48.

AWARD

*Claim (a).—*Denied.

*Claim (b).—*Sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
BY ORDER OF THIRD DIVISION

Attest: H. A. JOHNSON
Secretary

Dated at Chicago, Illinois, this 2nd day of October, 1936.