

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

PARTIES TO DISPUTE:

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

PORT TERMINAL RAILROAD ASSOCIATION

STATEMENT OF CLAIM: "Claim of the General Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees on the Port Terminal Railroad Association, that the position of Head Check Clerk shall be rated and paid at the rate of 75¢ per hour, and that Head Check Clerk, I. D. Cagle be reimbursed for wage loss sustained from August 1, 1937, to date, amounting to the difference between payment at 61½¢ per hour and 75¢ per hour."

EMPLOYEES' STATEMENT OF FACTS: "There is in record, a wage agreement between the parties, dated December 1, 1937, reading in essence as follows:

- '1. Increase the rates of pay for Freight Check Clerks from 56½¢ per hour to 75¢ per hour with overtime after eight hours service and for services performed on Sundays and holidays, enumerated in Rule 13 of the Agreement, this offer of 75¢ per hour for Freight Check Clerks to be retroactive to August 1, 1937.
2. Increase the rates of pay of other Clerks coming under the agreement 5¢ per hour retroactive to August 1, 1937.'

"The Agreement, the full text of which is attached and marked, 'Exhibit 1,' further provides that the Agreement will continue in force until changed or modified in accordance with provisions of the Railway Labor Act. The rates of pay established by the Agreement were applied currently beginning with the month of December 1937 with back pay allowances retroactive to August 1, 1937.

"The Port Terminal Railroad Association has one group of employees employed in the yard office and in the Superintendent's office, whose duties are the regular routine duties of any railroad office. It has another group of Freight Check Clerks who check freight to and from cars on the waterfront. It will be noted from the Wage Agreement of December 1, 1937 that Freight Check Clerks were granted an increase of 18½¢ per hour under Section 1 of the Agreement, whereas, other Clerks, that is, those employed in the yard office and the office of the Superintendent, were granted an increase of 5¢ per hour.

"When the back pay checks had been distributed and the new rates applied to current payrolls, it became known that the rate of pay of Head Check Clerk, I. D. Cagle had been increased 5¢ per hour under Section 2 of the Agreement instead of 18½¢ per hour under Section 1 of the Agreement. Prior to August 1, 1937, the effective date of the Agreement, the Head Check Clerk was paid at the rate of 56½¢ per hour, the same rate which was applicable to Freight Check Clerks who worked under his supervision and

Approved:

(Sgd.) H. R. Lyons,
Vice Grand President
(Sgd.) W. M. Crawford,
Grand Lodge Representative.

Approved:

(Sgd.) J. W. Evans,
Chairman—Board of Control

"The employment of freight check clerks is intermittent (see note article 6, rule 25), and they are only paid for actual hours on duty, and for that reason they receive a higher hourly rate than regularly assigned positions.

"Head check clerk Cagle works four days per week at the docks and three days per week in the Agent's office handling business in connection with rail-water-rail traffic exclusively. His average monthly earnings for 12 months ending July 31st, 1938, were \$194.86, which is a fair salary for the character of service performed. If he were paid 75¢ per hour and overtime after eight hours service and overtime rate for services performed on Sundays and holidays his average monthly earnings would have been for the period mentioned above \$245.57, a comparatively unreasonable sum for such a position.

"The payroll designation 'Head check clerk' is not descriptive of the duties of the position, which are supervisory and do not include checking of freight, for which the rate of 75¢ per hour is paid.

"It was recognized that because of the irregular employment of freight check clerks their earnings were inadequate at the established rate of pay and that they should receive a substantial increase. It was considered, however, that the proposed rate of 75¢ per hour was more than the character of the work justified, but finally to avoid a threatened suspension of business, the carrier agreed to pay the 75¢ per hour for freight check clerks, and overtime at time and one-half after eight (8) hours for all such intermittent service.

"Mr. Harper's attention was directed in my letter of January 18th, 1937, to the fact that there were other employes who did not check freight into cars at the docks, but who were engaged in the general business of handling steamship traffic, and that they had not been mentioned in our previous discussions, so that it would be understood they would be included in the scope of the Working Agreement. It was the intention, however, to only refer to supervisors and inventory clerks, whose employment is intermittent, but inadvertently head check clerks position was included, which should not have been mentioned as this is an assigned position and not in the same category as the other positions mentioned, which only provide irregular employment.

"When the working agreement was made it was understood then that there would likely be a national movement for an increase in rates of pay of all railroad employes. Our clerks elected, however, not to join their organization in the national movement for pay increases when it was inaugurated, since negotiations on the Port Terminal had been under way for some time prior thereto, and were still active. When the increase was agreed to for freight check clerks December 1st, 1937, the General Conference Committee had already agreed to an increase of five (5) cents per hour for all clerks, retroactive to August 1st, 1937. We accepted this decision subsequently and applied these increases accordingly. Therefore, since head check clerk Cagle was regularly assigned he was only entitled to the five (5) cents per hour increase granted other clerical employes regularly assigned.

"The position of the employes is without support under the contract and this application should be denied on the basis of facts; and the effort to obtain higher rate of pay for an assigned position through an irrelevant section of the contract should not be allowed."

OPINION OF BOARD: The question before the Board in this dispute is whether the claimant, Head Check Clerk I. D. Cagle, shall be paid under the provisions of Item 1 or Item 2 of the Wage Agreement dated December 1, 1937, effective August 1, 1937.

Article 2 of the Agreement covering rules and working conditions, effective February 1, 1937, under the caption "Rates and Basis of Pay," in Rule 3-(a), provides that freight check clerks shall be paid on an hourly basis.

The Agreement covering rules and working conditions, effective February 1, 1937, grew out of negotiations which began in October, 1936. During the course of these negotiations Chief Operating Officer, on January 18, 1937, addressed a letter to the General Chairman, reading in part as follows:

"Mention has not been made during our several discussions that the designation 'Freight Check Clerks' where they appear in the agreement includes Head Check Clerks, Supervisors, and Inventory Clerks in cooper shops. I refer to this at this time in order that there may be no misunderstanding that Head Check Clerks, Supervisors and Inventory Clerks who are employed at the sole expense of the Association and receiving the same hourly rate of pay as Freight Check Clerks are intended to be included in the agreement."

The record in this case indicates that this statement by the Chief Operating Officer was the understanding, with respect to its subject matter, upon which the Agreement of February 1, 1937, was consummated.

The evidence in this case also shows that prior to the Agreement of February 1, 1937, the head check clerk and the check clerks were paid on an hourly basis and at the same hourly rate, and continued to be so paid until the Wage Agreement of December 1, 1937, effective August 1, 1937. In applying this Wage Agreement the carrier drew a distinction between the check clerks, whose services are intermittent, on the ground that the 75¢ rate for check clerks was agreed to and established in consideration of the fact that due to the nature of the work in which they are engaged their employment is intermittent and not regular, and averages only the equivalent of about four days per week, the carrier applied Item 1 of the Wage Agreement to the check clerks and Item 2, providing an increase of 5 cents per hour, to the head check clerk.

The Wage Agreement was effective December 1, 1937, but retroactive to August 1, 1937. The employees represent that as soon as it became known, through the issuance of pay checks for back pay under this Agreement, that Item 1 of the Agreement had not been applied to the head check clerk, claim was made in his behalf for the application of the 75¢ per hour rate, and by letter of January 12, 1938, the claim was presented to the Chief Operating Officer.

In view of the mutual understanding with respect to the Agreement covering rules and working conditions of February 1, 1937, that the term "check clerks" embraced the head check clerk, and the further fact that the same hourly rate had been applied to the check clerks and the head check clerk prior and subsequent to the effective date of that agreement, and further that the Wage Agreement of December 1, 1937, does not indicate any intention of the parties to differentiate between the check clerks and the head check clerk in the application of the 75¢ rate, it is the opinion of the Board that Item 1 of the Wage agreement of December 1, 1937, is applicable to the head check clerk, with respect to rates of pay. It is to be noted, however, that the head check clerk is regularly assigned. Rule 13-(a), "Sunday or Holiday Work," of Article 4 of the Agreement of February 1, 1937, is therefore applicable to this position.

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 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 Item 1 of the Wage Agreement of December 1, 1937, effective August 1, 1937, is applicable, as to rates of pay, to the position of head check clerk.

AWARD

Claim sustained in accordance with the above Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 30th day of March, 1939.