

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

PARTIES TO DISPUTE:

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

LOUISIANA & ARKANSAS RAILWAY COMPANY

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that—

(a) The carrier improperly classified and paid A. L. Smith, Shreveport, La. from date of his employment, August 22nd, 1934, until furloughed June 3rd, 1938, and that Mr. Smith should be classified as clerk and paid under rules 1, 2, 3, 5, 20, 21, 67, and 70, retroactive to August 22nd, 1934.

(b) Proper clerical seniority date of A. L. Smith shall be August 22nd, 1934, under rules 1, 2, 3, 5 and 20 of Schedule Agreement effective August 1st, 1929.

EMPLOYEES' STATEMENT OF FACTS: "A. L. Smith entered service of the Louisiana and Arkansas Railway Company on August 22nd, 1934, at Shreveport Roundhouse. He was assigned to routine office work. His name was carried on the payroll as a laborer and he was paid at the laborer's rate of 20¢ per hour. On November 15th, 1934, a wage restoration agreement increasing rate of pay for Clerks working on the Louisiana and Arkansas Railway Company Two and One-Half (2½) Per Cent, was put into effect and Mr. Smith was given the increase and paid at rate of 21¢ per hour until April 1st, 1935, when his rate was increased to 22½¢ per hour under another wage restoration agreement for Clerks which was signed on March 1st, 1935. On May 1st, 1936, his rate was increased under Clerks wage agreement to 23¢ per hour. On May 16th, 1936, Mr. Smith's payroll title was changed to read Engine Watchman and he was paid at rate of 25½¢ per hour. On September 1st, 1936, Mr. Smith was again given the Clerks wage increase which was effective as of that date and his rate changed to 26¢ per hour. On December 16th, 1936, Mr. Smith's payroll title was changed to read 'Round House Clerk' and he was paid at rate of \$75.00 per month until June 16th, 1937, when his rate was increased to \$76.87 per month under Clerks wage increase agreement which was effective that date.

"On November 30th, 1937, General Chairman Webster filed claim with carrier requesting that Clerk Smith's rate be corrected to \$4.00 per day in accordance with wage contract dated April 1st, 1929.

"Effective with December 16th, 1937, Clerk Smith was paid at rate of \$3.01 per day and this rate was continued until he was removed from service.

"Conferences relating to this dispute have been held with various officers of the carrier by General Chairman."

brother in the general performance of the varied duties, but at no time were the clerical duties in this roundhouse-office sufficient to require four (4) hours clerical work of the said A. L. Smith, and what work he did was assisting his brother and relieving his brother of whatever work he could.

"On December 16, 1936, in a further effort to assist the boys, General Foreman Thorpe prevailed upon the Mechanical Superintendent to grant authority for the second clerk in his office and A. L. Smith was given the job and the rate of pay established at that time was \$75.00 per month. Under general increase June 16, 1937, this was raised to \$76.87 per month.

"November 30, 1937 General Chairman Webster took up the matter of a monthly rate being paid and asked for re-classification to a daily rate of \$4.00 per day. On December 16, 1937 the position was placed on a daily basis of \$3.01 per day instead of \$76.87 per month.

"The basis for the establishment of this rate was Articles 65 and 70, Clerks' Agreement, that positions established would be of the same basic rate as of similar positions. The only similar position on the district at that time was Roundhouse clerk at New Orleans, which carried a rate of \$2.99 per day. To have established \$2.99 a day would have had the effect of reducing the rate of pay and therefore this position held by A. L. Smith was given the additional 2¢ based on the \$76.87 salary he was then receiving.

"Chairman of the Organization contended that the position should pay \$4.00 per day instead of \$3.01, contending that a position as Roundhouse clerk at Minden had previously paid this rate of pay, although this position had previously been abolished and was not then in existence. Claim for rate of \$4.00 per day was declined.

"The Chairman of the Organization also contended that Smith's seniority should date from August 22, 1934, which claim was declined on the ground that A. L. Smith had not been a clerk, had not performed full clerical duties for as much as four hours per day until December 16, 1936.

"June 3, 1938 this second position of clerk in the roundhouse at Shreveport was abolished. It was restored on December 5, 1938, and advertised at the same rate of pay and same conditions and bid in by A. L. Smith."

CARRIER'S POSITION: "There are no good grounds, either under the schedule or otherwise, for the claim which has been filed in this case for seniority as clerk prior to December 16, 1936, nor for the rate of pay of \$4.00 per day. Carrier complied with all schedule requirements.

"The Organization is attempting to penalize Carrier for its effort to assist a young man who was considered worthy of assistance and for its good intentions in attempting to help the boy himself, as well as his brother.

"All of the above facts and statements have been made known to the other party and have been subject of conference.

"Wherefore, carrier earnestly requests that the Board refuse to assume jurisdiction as it has in no manner failed to comply with the rules of the Agreement.

"If jurisdiction is assumed Carrier requests that claim be denied in its entirety. If hearings are held carrier requests that it be heard orally and on brief with privilege of submitting rebuttal to any claim or statement by the Organization."

OPINION OF BOARD: In this case the Board is asked to decide:

(a) The proper classification and rate of pay of claimant A. L. Smith under the terms of the current agreement, effective August 1, 1929, retroactive to August 22, 1934, the date of claimant's first employment with the carrier, and;

(b) The proper seniority datum of claimant Smith under the current agreement.

It is shown that A. L. Smith entered the service of the carrier on August 22, 1934, with a payroll classification as laborer at the roundhouse, Shreveport, La. His brother, Ellis Smith, held the position of storekeeper-roundhouse clerk. Admittedly, A. L. Smith, when he was employed, was expected to understudy his brother, the storekeeper-roundhouse clerk. Claimant A. L. Smith continued under the payroll classification of laborer until about May 15, 1936, when he was given the payroll classification of engine watchman. He still continued, however, understudying the clerical work.

On December 16, 1936, the general roundhouse foreman secured payroll authority for an additional clerical position, and as of that date A. L. Smith was given the payroll classification of clerk at a rate of \$75 per month.

On November 30, 1937, the general chairman, in A. L. Smith's behalf, filed claim with the carrier "requesting that Clerk Smith's rate be corrected to \$4 per day" instead of the \$75 per month which he was then receiving. The request for a rate of \$4 per day was based upon the contention, under Rule 70 of the agreement, that the work being performed by A. L. Smith was comparable with the position of roundhouse clerk formerly existing at Minden, La.

Minden at one time was a large engine terminal, but subsequent to the consolidation of the L. R. & N. and the L. & A. Railway properties the facilities at Shreveport (30 miles distant from Minden) were enlarged, and it became the more important engine terminal. About this time, but before A. L. Smith was ever employed at Shreveport, the roundhouse clerk position at Minden was abolished. It is the petitioner's contention that the work of the former position was merely transferred to Shreveport, notwithstanding the fact that there was an interval between the abolishment of the Minden job and the first employment of A. L. Smith at Shreveport.

In the negotiations following the request of November 30, 1937, for a change in A. L. Smith's rate of pay, the carrier contended that the rate of \$75 per month, originally established for Smith's position effective December 16, 1936 (increased to \$76.87 per month effective June 16, 1937), was based upon a comparable position classified as steno-clerk in the Mechanical Department at New Orleans, La. (Minden, Shreveport, and New Orleans are in the same seniority district) rated at \$2.99 per day. The evidence indicates that this position also had been abolished in 1930. Effective December 16, 1937, the carrier changed Smith's rate from monthly to daily basis and established a daily rate of \$3.01.

The record is clear that at the time A. L. Smith was employed, August 22, 1934, his brother, Ellis Smith, with payroll classification as steno-clerk or storekeeper-roundhouse clerk, was receiving \$3.96 per day; that it was the intention that A. L. Smith should understudy that position. The stenographic duties that may have been attached to that position appear to have been assigned to another position prior to A. L. Smith's employment.

The record is not clear whether the payroll classification of Ellis Smith's position was changed from steno-clerk to storekeeper-roundhouse clerk, but it is clear that additional duties with respect to handling stores supplies were added to it and that the rate of pay of the position was increased. These facts, and the attending circumstance of the increased importance of Shreveport as an engine terminal, clearly indicate, in the opinion of the Board, that A. L. Smith succeeded to the duties of the position formerly held by his brother and rated at \$3.96 per day, and it is the judgment of the Board, based upon all the facts and circumstances of this particular case, that effective November 30, 1937, that rate should have been applied.

With respect to the seniority datum of A. L. Smith, under the current agreement effective August 1, 1929, it is the opinion of the Board that under the facts of this case his seniority datum should be August 22, 1934.

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 employe involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act, approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That a rate of \$3.96 per day should have been established for the position held by A. L. Smith effective November 30, 1937, and that his proper seniority datum should be August 22, 1934.

AWARD

(a) A rate of \$3.96 per day shall be established for the position here in question, effective November 30, 1937, and the incumbent of such position shall be paid the difference between the rate that he did receive and \$3.96 per day for each day the position was worked from November 30, 1937, to June 3, 1938, when said position was abolished, and that said rate shall apply to the position from and after the date it was re-established in December, 1938 (subject to subsequent wage adjustments agreed upon, if any), and reimbursement shall be made to the incumbent thereof since that date in the same manner as above described;

(b) Clerical seniority datum of A. L. Smith shall be August 22, 1934.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 5th day of October, 1939.