

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

PARTIES TO DISPUTE:

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

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

"(a) The Carrier violated and has continued to violate the terms of the current agreement when, on April 15, 1938, it abolished the position of Mileage Equalization Clerk, rate \$7.04 per day, and assigned the work to employes not covered by the agreement or to employes paid at lower rates per day, and

"(b) That the Carrier shall now be required to restore the position of Mileage Equalization Clerk and compensate employes for all wage losses as a result of the Carrier's violation of our agreement, retroactive to April 15, 1938."

EMPLOYES' STATEMENT OF FACTS: "When, on June 16, 1937, the two parties to this dispute entered into an agreement covering wages, hours of service and working conditions as hereinafter referred to and cited, there existed in the Car Service Office at Kansas City, Mo., a position classified as 'Mileage Equalization Clerk,' rated at \$7.04 per day.

"The duties of said position on June 16, 1937, and continuing thereafter until April 15, 1938, were:

- 1—Making up payroll and handling correspondence relating to same.
- 2—Handling mileage equalization on tank cars.
- 3—Figuring train time and compiling same.
- 4—Posting car mileage.
- 5—Workman compensation report.
- 6—Empty tank car diversions.
- 7—Car service reports CS 10, CS 11, CS 44, and CS 60.
- 8—Car location.
- 9—Writing up cars delivered and received, Short Line Railroads—
DeQueen & Eastern,
Oklahoma & Rich Mountain,
Sabine & Neches Valley,
Mansfield Ry. & Transpt. Co.,
Joplin & Pittsburg,
figuring per diem and rendering bills for same.
- 10—Making bills and vouchers.
- 11—Average agreements.
- 12—Writing load and empty mileage by individual car numbers to Private Line Companies.

ones created under a different title covering the same class of work for the purpose of reducing the rate of pay or evading the application of these rules.

"When the position of Mileage Equalization Clerk was abolished, there was no transfer of the rate from one position to another. The work was simply distributed among the other employees in the office. Neither was a new position created under a different title covering the same class of work. In other words, there was no violation of the rule in spirit or in letter.

"Larson placed himself on the position of System Per Diem Clerk, and when so doing personally asked permission to take along some of the work he had previously been doing because it was what he considered lighter work and he was more familiar with it. The carrier, in an effort to oblige him in consideration of his long period of service and his bad health, arranged the work so that he could take care of the job in a reasonably satisfactory manner. Such an arrangement is not out of the ordinary. Where work fluctuates in importance and in volume as much as it does in the Car Service office, there is and always has been a continual shifting of work, and no one was adversely affected by the arrangement under which Larson was permitted to continue to handle the work in question."

OPINION OF BOARD: The record in this case shows that as a result of the abolishment of the position of Mileage Equalization Clerk, rate \$7.04 a day, the majority of the work of that position was assigned to position designated as System Per Diem Clerk, rate \$5.89 a day, to which position the former incumbent of the position of Mileage Equalization Clerk exercised his displacement rights upon abolishment of the latter position.

Some of the work of the position of Mileage Equalization Clerk was also assigned to excepted positions for a temporary period, then assigned to various positions covered by the agreement, but in view of the conclusions herein reached, the Board finds it unnecessary to pass upon these questions.

In view of all the facts and circumstances of this case as disclosed by the record, the Board holds that the position of System Per Diem Clerk in fact became the position of Mileage Equalization Clerk after the change in assigned duties effective April 16, 1938.

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 Board Act, as approved June 21, 1934;

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

That effective April 16, 1938, the position of System Per Diem Clerk, rate \$5.89 a day, actually became the position of Mileage Equalization Clerk, rate \$7.04 a day, and it shall be so rated as of that date.

AWARD

Claim sustained to the extent indicated in the above Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 9th day of October, 1939.