

Award No. 1143
Docket No. CL-1048

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

I. L. Sharfman, Referee

PARTIES TO DISPUTE:

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

FLORIDA EAST COAST RAILWAY

W. R. Kenan, Jr., and S. M. Loftin, Receivers

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

"Rate of pay of Yard Clerk at Fort Pierce be adjusted from \$4.6854 per day to \$5.8619 per day, effective from June 20, 1938."

EMPLOYES' STATEMENT OF FACTS: "On June 13, 1938, the Carrier established position of Yard Clerk at Fort Pierce, rate of pay \$4.6854 per day. Duties of this position are described in District Superintendent's bulletin No. 151, copy of which is attached as Employees' Exhibit 'A'."

CARRIER'S STATEMENT OF FACTS: "1. On June 13, 1938 the District Superintendent, in Bulletin 151, advertised a position of yard clerk at Fort Pierce, at a rate of \$4.6854 per day, copy of which is attached, marked Carrier's Exhibit 'A.'"

"2. In a letter to the General Superintendent dated September 21, 1938, the General Chairman of the Brotherhood stated:

"In rating this new position at \$4.6854 per day, I think you will agree that the intent of Rule 56 was not carried out, in that similar positions in the same seniority district carry rates of \$5.8619 per day.

"Please advise if you are agreeable to rating the position at Fort Pierce in conformity with the wages paid for positions of similar kind or class in that seniority district."

"A copy is attached, marked Carrier's Exhibit 'B.'"

"3. In a letter to the General Chairman dated September 30, 1938, copy of which is attached hereto as Carrier's Exhibit 'C,' the General Superintendent disagreed with the views of the General Chairman, and set out in detail his reasons therefor. In another letter to the General Superintendent on October 8th, the General Chairman expressed some further views about the rate of the position, to which the General Superintendent responded on October 10th. Copies of these letters are being filed herewith, identified as Carrier's Exhibits 'D' and 'E,' respectively. The matter was discussed at a conference April 18 and 19, 1939 between the General Chairman and the General Superintendent, and a copy of the General

OPINION OF BOARD: While the mere establishment of the position here involved on a permanent basis as of June 20, 1938, after being established and abolished on a seasonal basis for many years at the same basic rate of pay, may not in itself render it a new position within the meaning of Rule 56 of the Agreement, the fact that the permanent position thus established required the incumbent to assume duties previously performed by other classes of employees, and included, in addition to the regular yard-clerk duties of the previously established seasonal positions, such duties as "checking baggage and handling U. S. mail and baggage, . . . protecting crossing for passage of trains, and performing other agency . . . duties as directed by the Agent," sustains the position of the employees that Rule 56 is applicable to the facts of this proceeding.

Under these circumstances, the case must be remanded to the parties for negotiation of the appropriate rate of pay on the basis of that rule, which specifies that "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." As was stated, in connection with a like rule, in Award 1074 of this Division: "It is the function of the carrier, in the first instance, to establish the rate in conformity with these standards; upon protest of the employees, the process of negotiation must be pursued. And if, with continued disagreement after negotiation, it may be assumed to be an appropriate function of this Board, upon finding a violation of the governing rule, to approve or prescribe the rate deemed to conform to that rule, such action can only be taken upon a record adequate not only to disclose the fact of violation but to determine the proper rate in the circumstances."

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 employee involved in this dispute are respectively carrier and employee 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 Rule 56 of the Agreement was applicable to the position here involved as of June 20, 1938.

AWARD

The proceeding is remanded to the parties for negotiation of the appropriate rate of pay, as of June 20, 1938, on the basis of the requirements of Rule 56 of the Agreement.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 19th day of July, 1940.