

Award No. 1201  
Docket No. CL-1266

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**PARTIES TO DISPUTE:**

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

**THE DENVER AND RIO GRANDE WESTERN RAILROAD  
COMPANY**

**Wilson McCarthy and Henry Swan, Trustees.**

**STATEMENT OF CLAIM:** "Claim of the employees that position designated as 'Report Clerk,' Salt Lake Division Superintendent's Office, rate \$4.80 per day be re-bulletined at proper rate of not less than \$5.15 per day, same to be retroactive as of date of establishment of position, January 4, 1936."

**JOINT STATEMENT OF FACTS:** "Position designated as 'Report Clerk' was established in Salt Lake Division superintendent's office as of January 4, 1936, and bulletined at rate of \$4.80 per day. The employees protested the establishment of such a rate and requested that it be rebulletined at rate of not less than \$5.15 per day, which request was refused by the Carrier."

**POSITION OF EMPLOYEES:** "Employees contend that heretofore the lowest wage rate of any scheduled Group 1 position in the Salt Lake Division Superintendent's Office was \$5.15 per day and that the duties assigned to the position now classified as 'Report Clerk' are similar to those of former positions which carried a rate of \$5.15 per day or higher, and further contend that the duties of this position are equal in importance and responsibility to positions now existing carrying rates of \$5.15 per day or higher."

"During 1931-32 a number of positions were abolished in the Salt Lake Division Superintendent's Office which carried a rate of not less than \$5.15 per day. Employees base their claim on Rules 70 and 80, which provide:

Rule 70—"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."

Rule 80—"Established positions shall not be discontinued and new ones created under a different title covering relatively the same class of work for the purpose of reducing the rates of pay or evading the application of these rules."

"For comparison we are citing below the assigned duties of the position of Report Clerk.

Figuring and writing discharge checks for roadway bridge and water service and signal department employees. Approximately five to twenty checks issued daily. This work is of a timekeeping nature which carries a rate of \$5.50 per day or higher.

Compiling daily report covering work performed by extra gangs, showing progress made daily, ties inserted and etc.

A number of conferences were held, during which the Organization requested that a rate of \$5.15 per day be established, which was denied by the Management.

"It is the position of the Management the character of work performed; namely, routine clerical and report work, did not justify a rate in excess of \$4.80 per day. The position as first authorized was to provide help in the Engineering Department, however, for the first few months after the position was created, that department did not need it full time, and the incumbent was, therefore, used in the Superintendent's Office to assist in miscellaneous routine clerical work.

"Similar positions at the same rate were established at Pueblo, Grand Junction and Alamosa, Colorado, which were likewise protested but during conference Jan. 20, 1937, the Organization admitted the rate at these points were proper, taking the position in the Salt Lake case, however, that inasmuch as clerical positions then in effect at Salt Lake City carried rates of not less than \$5.15 per day, the newly established position should have paid that rate; which contention, in the opinion of the Carrier, is not sound. Investigation at the time disclosed the Report Clerk was put on before the actual need for same existed, and as above stated, for the first few months after the position was created and in order to keep it in existence, the clerk occupying same was used in performing utility work in the Superintendent's Office. The utility work performed by this Report Clerk did not carry the responsibility or justify claim for a rate of \$5.15 per day, the same as was paid on existing positions.

"The Organization allege violation of Rule 70, reading:

'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.'

also Rule 80, reading:

'Established positions shall not be discontinued and new ones created under a different title covering relatively the same class of work for the purpose of reducing the rates of pay or evading the application of these rules.'

"The Carrier holds there was no violation of these rules, first, for the reason this was an entirely new position, the work on which was not similar to other existing positions, and, second, it is obvious that an established position was not discontinued and a new one established under a different title."

There is in evidence an Agreement between the parties bearing effective date of February 1, 1926.

**OPINION OF BOARD:** Rule 70 of the Agreement governs in resolution of this dispute, and the proper rate of pay depends upon a fair and reasonable application of the standards prescribed in this Rule.

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.

The present record is inadequate for this Division to make such determination since it lacks a sufficient portrayal of the responsibilities, work and rates of pay of other positions deemed to be of similar kind or class

in the seniority district involved, likewise it is not reasonably reconcileable in respect to the actual responsibilities and work of the new position of Report Clerk. In these circumstances the case must be remanded to the parties for negotiation of the appropriate rate of pay on the basis of the governing rule.

**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, as approved June 21, 1934;

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

That Rule 70 of the Agreement was applicable to the position here involved.

#### AWARD

The proceeding is remanded to the parties for negotiation of the appropriate rate of pay, on the basis of the requirements of Rule 70 of the Agreement.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: H. A. Johnson  
Secretary

Dated at Chicago, Illinois, this 25th day of October, 1940.