

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

PARTIES TO DISPUTE:

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

GULF, COLORADO AND SANTA FE RAILWAY CO.

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that Carrier violated the rules of the Clerks' Agreement when, on April 27, 1938, it abolished clerical position No. 421, Miles, Texas, rate \$4.77 per day, and established Position No. 424, rate \$2.58 per day, in lieu thereof; and

"Claim that Position No. 421 shall now be re-established and all employees involved in or affected by said violation of rules fully compensated for monetary losses sustained as result of Carrier's action, retroactive to April 27, 1938."

EMPLOYEES' STATEMENT OF FACTS: "For many years prior to April 27, 1938, there had been maintained at Miles, Texas, a Class 1 clerical position, identified by pay-roll No. 421, rate of pay \$4.77 per day, hours of assignment 1:30 P. M. to 10:30 P. M., daily, one hour meal period, and 7:00 P. M. to 10:30 P. M., Sundays. Effective that date, Position No. 421 was abolished and a new position titled Station Helper, payroll No. 424, Class 2, rate \$2.58 per day, hours and days of assignment same as for former position No. 421, was created in lieu thereof.

"The duties which constituted the essence or substance of Position No. 421 were as follows:

Revise waybills.	Make remittances.
Make expense bills	Check yards and post demurrage book.
Prepare abstracts of waybills received, Forms 305 and 309.	Receive and deliver l. c. l. shipments of freight.
Write up Form 450, recapitulation of expense bills and balance same.	Make 44 report of carloads forwarded.
Maintain station cash book.	Make monthly freight and passenger reports.
Make daily balance of freight account, Form 456.	Make 1301 car record report.
Bill express shipments.	Make weekly report of cars on hand containing 'Company Material.'
Bill cream for movement by baggage.	Answer telephone inquiries concerning freight, tickets, express and baggage.
Write up P. U. & D. reports.	Work mail, baggage and express on passenger trains.
Check and sign bills of lading covering both C/L and L. C. L. shipments tendered.	Transport U. S. Mail to and from postoffice.
Make waybills covering outbound shipments of freight.	Janitor work.
Make postal notices of arrival of shipments handled via freight and express.	
Sell tickets.	

'Article 12, Section 1

'Section 1. Positions (not employes) shall be rated and the transfer of rates from one position to another shall not be permitted.'

"The Carrier complied with the provisions of this rule when it re-established the position of helper at Miles, in that it applied the rate in effect at the time the helper's position was abolished on January 1, 1934, adjusted to conform to the increase granted all clerical employes effective August 1, 1937, the resultant rate being the rate applicable to all helpers' positions in the same seniority district. There was no transfer of rates from one position to another.

'Article 12, Sections 3-a, 3-b and 6

'Section 3-a. Employes temporarily or permanently assigned to higher-rated positions shall receive the higher rates while occupying such positions; employes temporarily assigned to lower-rated positions shall not have their rates reduced.

'Section 3-b. A "temporary assignment" contemplates the fulfillment of the duties and responsibilities of the position during the time occupied, whether the regular occupant of the position is absent or whether the temporary assignee does the work irrespective of the presence of the regular employe. Assisting a higher-rated employe due to a temporary increase in the volume of work does not constitute a temporary assignment.'

'Section 6. 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 rate of pay or evading the application of these rules.'

"The Employes have contended that the individual assigned to the helper's position has in effect been assigned to a higher rated position, thus constituting a violation of Sections 3-a and 3-b, or on the other hand that the higher rated clerk's position was discontinued and a new one created under the title of helper for the purpose of reducing the rate of pay. The Carrier contends that the change made on April 27, 1938, was merely the re-establishment of a helper's position that had previously been in existence from August 10, 1930, to February 1, 1931, and again from February 8, 1932, to January 1, 1934, and that the net effect was to return the station to the same status as during the periods between February 8, 1932, to November 4, 1932, and February 1, 1933, to September 25, 1933, when the station was operated by a force consisting of an agent-telegrapher and station helper.

"The Carrier further contends that the position of clerk, No. 421, was continued at Miles after the need therefor ceased to exist in that there was not sufficient clerical work required at Miles to necessitate relieving the agent of four or more hours clerical work per day. In other words, the duties requiring assignment of a clerk had disappeared, consequently there was no justification for continuing that position.

"The Carrier again requests that the claim be dismissed because it is not properly before the Board.

"If the Board assumes jurisdiction, the Carrier reserves the right to make further reply at, or prior to, the time of hearing."

OPINION OF BOARD: The controlling rule in this dispute is Article 2, Section 1-a, reading:

"Clerical Workers. Employees who regularly devote not less than four (4) hours per day to the writing and calculating incident to keeping records and accounts, rendition of bills, reports and statements, handling of correspondence and similar work."

After a careful review of this case the Board is of the opinion that the evidence justifies the conclusion that the circumstances of record show the above quoted rule is applicable to the position in question. The proper rate of position No. 424 is \$4.77 per day and employees occupying same should be so compensated effective April 28, 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 Act, as approved June 21, 1934;

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

That claim be sustained to extent indicated in Opinion.

AWARD

Claim sustained to extent indicated in Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 19th day of June, 1941.