

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

George E. Bushnell, Referee

PARTIES TO DISPUTE:

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

SOUTHERN PACIFIC COMPANY (PACIFIC LINES)

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

"1. That the position of Receiving and Delivery Clerk-Crane Operator at River Track, Los Angeles, California, discontinued in violation of the Agreement between the Parties, be restored.

"2. That payment of wage losses retroactive to March 24, 1938, be made to all employes affected by the discontinuance of said position."

EMPLOYEES' STATEMENT OF FACTS: "Prior to March 24, 1938, position No. 271, Receiving and Delivery Clerk-Crane Operator, was assigned at Los Angeles Freight Terminal. The rate of pay was \$5.65 per day.

"Effective March 24, 1938, Carrier abolished position No. 271 and established position No. 122, Stevedore-Clerk, with rate of 58¢ per hour for actual time worked as Stevedore, and rate of \$5.40 per day for actual time worked as Receiving and Delivery Clerk-Crane Operator."

POSITION OF EMPLOYEES: "As a result of Arbitration Award in 1927, which became effective as of January 1, 1927, there were established for all positions then in existence on Southern Pacific (Pacific Lines) and coming within the scope of clerks' Agreement with the Carrier, certain rates of pay, which rates of pay were and are part and parcel of our Agreement with the Carrier, and subject to change only by agreement between the employes and the Carrier, brought about through orderly and prescribed procedure under the provisions of the Railway Labor Act and our working agreement with the Carrier.

"Following the Arbitration Award of 1927 as hereinbefore referred to. The rates of pay and classifications were, for ready reference, set up on Forms designated and thereafter known as Form C-21 Final.

"The position now involved in this submission was established November 14, 1935, in accordance with Rule 5 of our current Agreement, with rate of \$5.65 per day, which is the established C-21 final rate of \$5.25 per day, plus 40¢ per day increase effective August 1, 1937.

"Rule 5 of our current Agreement reads as follows:

'Wages for new positions shall be in conformity with the wages for positions of similar kind or class in the seniority district where created.'

CONCLUSION

"Carrier contends that the claim of Petitioner is entirely without merit for the following reasons:

(1) Position No. 271, Receiving and Delivery Clerk-Crane Operator, was abolished March 23, 1938, due entirely to the fact that the clerical work assigned to this position at the 'River Team Track' had diminished.

(2) Position No. 122, Stevedore-Clerk, was established for the specific purpose of performing the diminished clerical work at the 'River Team Track,' which included that of a 'Check Clerk' which had not heretofore been performed by incumbent of position No. 271, also other duties to complete the 8-hour assignment.

(3) Incumbent of position No. 122 has been properly compensated in accordance with paragraph 3 of Agreement, Carrier's EXHIBIT 'A,' and Section 2 of Agreement, Carrier's EXHIBIT 'B,' and all rules of the Clerks' Agreement, since date position was established.

"In the absence of any rule of the Clerks' Agreement, or any Memorandum of Agreement, which would sustain the claim, the Carrier contends that said claim has no justification nor merit and that incumbent or incumbents of position No. 122 have been properly compensated for services performed in accordance with the provisions of Clerks' Agreement and Memoranda of Agreement reproduced and made a part of this submission as Carrier's EXHIBITS 'A' and 'B.' Carrier therefore respectfully requests that the claim of the Petitioner be denied."

OPINION OF BOARD: Effective March 23, 1938, a composite position was abolished at the Los Angeles Freight Station which included the duties of clerk, crane operator and stevedore under the designation of Receiving and Delivery Clerk-Crane Operator. This was done because of a decrease in the volume and a change in the character of the carrier's business at this station.

A new position was created at the River Team Track designated as Stevedore-Clerk-River Team Track. The duties of the new position included crane operating, loading and unloading heavy and bulky freight and clerical work.

The occupant of the abolished position had received \$5.65 per day; five hours of his work was clerical and crane operating and 3 hours was stevedoring. The new position required the occupant to perform 3 hours 55 minutes of clerical work including crane operating and 4 hours and 5 minutes of stevedoring. The pay on the new position was fixed at \$5.10 a day; this was made up of 58¢ an hour for stevedoring and at the rate of \$5.85 a day for clerical work including crane operating.

Petitioner claims that this action of the carrier was a violation of Rule 6 but no circumstances are shown which indicate that the old position was discontinued and the new one created "for the purpose of reducing the rate of pay or evading the application of these rules." It should be added that part of the work embraced in the new position was performed at a new location.

The rate of pay fixed for the new position was a fair and reasonable application of the standard prescribed in Rule 5. Factors of the pay were the same as those in force for similar work in the seniority district.

While not controlling because not in force during the period from February 1, 1938, to April 1, 1939, the special agreements of June 19, 1936, and March 27, 1939, recognized the need of creating composite positions in order to relieve the situation caused by fluctuations in work at the Los Angeles station. The pay fixed for the new position also conforms to that provided in the subsequent special agreement of 1939.

The situation thus disclosed is comparable to that in Award Number 1540, Docket No. CL-1476.

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 employes involved in this dispute are respectively carrier and employes 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 the evidence in this record does not show any violation of the agreement or any circumstances supporting the claim.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 31st day of July, 1941.