

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

PARTIES TO DISPUTE:

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

THE ERIE RAILROAD COMPANY

STATEMENT OF CLAIM: "1. Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, that the Carrier violated the principles contained in the Clerks' Agreement when it failed and refused to establish a rate of pay on position of Claim and O. S. & D. Clerk of \$5.60 per day. Covered by Clerical Advertisement No. 38 of September 28, 1939 on the Buffalo-Rochester Division of the Erie Railroad at Suspension Bridge, New York.

"2. Claim of the employees that employee filling this position be paid the difference between what he has earned and what he would have earned had he been paid at the rate of \$5.60 per day for all the time worked on the position, and any and all other employees affected, be reimbursed in a like manner."

EMPLOYEES' STATEMENT OF FACTS: "Effective April 16, 1933 position of Claim and Demurrage Clerk, rated \$5.20 per day, was abolished. Effective July 31, 1939, position of Claim and O. S. & D. Clerk was established, covered by Buffalo-Rochester Division Clerical Advertisement No. 38 of September 28, 1939 with a rate of \$5.00 per day. The duties on the position of Claim and Demurrage Clerk abolished April 16, 1933 were as follows:

- Handle all correspondence pertaining to claims.
- Keep record of all Over, Short and Damaged shipments and handle all correspondence pertaining to same.
- Make inspections and reports on concealed damage to L.C.L. freight.
- Make inspections and reports on carload shipments.
- Worked from one to one and one-half hours each day on demurrage records of cars in Suspension Bridge Territory.
- Handle all claims between patrons and the Auditor of Freight Claims.

"The duties on the position of Claim and O. S. & D. Clerk established July 31, 1939 are substantially as follows:

- Handle all claims between patrons and Freight Claim Department of the Erie Railroad.
- Handle all correspondence pertaining to freight claims.
- Keep record of all Over, Short and Damaged shipments in Suspension Bridge Territory, and handle all correspondence in relation to same.
- Make inspections on concealed damage to L.C.L. freight.
- Make inspections on all damage C.L. freight.

OPINION OF BOARD: Based upon all of the facts in this case, the Board feels that the position in question, when it was established effective either July 31, 1939, as stated by the petitioner, or in September 1939, as stated by the Carrier, was a new position and the rate therefor should have been established in accordance with the provisions of Rule No. 37. The Carrier so argues and the rebuttal argument of the petitioner would indicate that the latter now is in agreement thereon; however, the parties are in disagreement as to the position or positions which are comparable with the position in dispute, as provided for in the rule. The Board, therefore, reaffirms the principle established by its Award Nos. 1074 and 1201, and remands this dispute to the parties for settlement in accordance therewith. If not so settled, the dispute may be resubmitted to the Board upon a more adequate record.

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 Rule No. 37 was applicable to the position here involved as of the date it was established.

AWARD

The proceeding is remanded to the parties for negotiation of the appropriate rate of pay, on the basis of the requirements of Rule No. 37 of the current agreement, such rate to apply for the period the position in question was in existence.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 9th day of October, 1941.