

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Sidney St. F. Thaxter, Referee

PARTIES TO DISPUTE:

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

HOUSTON BELT AND TERMINAL RAILWAY COMPANY

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

(a) The correct rate of pay for the position of Gateman at the Union Station, Houston, Texas, is \$170.00 per month. Also

(b) Claim that the Gateman be paid the difference between \$170.00 per month and the rate actually received retroactive to the date the position was created."

EMPLOYES' STATEMENT OF FACTS: "On December 3, 1940 the carrier issued bulletin covering a newly created position with title of Gate-man, and specified a rate of \$141.13 per month.

"Prior to this position being created the carrier did not have a position with this title and rate of pay.

"Before this position was created the 'gate' work was performed by the following positions with rates of pay as indicated.

Stationmaster	\$190.00 per month
Reclaim Clerk	170.03 per month
Wheelage Clerk	170.03 per month
Record Clerk	177.92 per month
Record Clerk	177.92 per month
Car Report Clerk	165.16 per month

"The carrier first intended to classify the position as Assistant Station Master, and it was discussed in conference on November 18, 1940, at which time we advised the carrier that a rate of \$170.00 per month was a proper rate for the position."

POSITION OF EMPLOYES: "Prior to November 16, 1940 the position of Station Master was excepted from the provisions of the Clerks' Agreement. The position was assigned, and worked over a spread of sixteen hours and thirty minutes. The position was placed under the Clerks' Agreement effective November 1, 1940 and, of course, the hours had to be changed to conform to the agreement, at which time the position of Gateman was created.

"The employes quote the following rules of the current agreement in support of this claim.

Union Terminal Gateman's work being comparable with that performed at Houston Union Station, this daily rate of \$4.64 was used to establish the monthly rate of pay, which was arrived at by multiplying \$4.64 by 365, the days assigned per year and dividing by 12. This produced the monthly rate of \$141.13 which is being used and which we consider the 'Going Rate' for work of this classification in this section of the Country.

"The Porters who were changed to Assistant Baggage Room Checkers were raised to this rate of pay also to comply strictly with the terms of agreement which requires the payment of the higher rate of pay when clerks on lower rated positions are used on higher rated positions.

"As to the contention of the Clerks' Organization that proper rate of pay for 'Gateman Positions' should be \$170.00 per month account of various clerical employes previously used from seniority district to perform work on gates received salaries ranging from \$165.00 to \$170.00 per month is not correct. Their rates of pay were based on work performed on their regular positions and not on work performed on 'gates' and should not be considered. They were higher rated employes working short intervals daily on lower rated positions, and in conformity with Clerks' Agreement they were paid their regular and higher rate.

"To acquaint the Board with the amount of work performed daily by the clerical employes from seniority district No. 2 in seniority district No. 4 before change was made and clerks in seniority district No. 2 were relieved from this work, am giving below names of employes, title of position, rate of pay and assignment on 'Gatework.'

Name	Title	Rate of Pay	Assignment	Total Time
Lund, W. C.	Reclaim Clerk	\$142.55	7:00 A. M. to 8:20 A. M. 12:00 noon to 12:30 P. M. 2:30 P. M. to 3:00 P. M.—	2'20"
Williams, A. H.	Wheelage Clerk	142.55	7:45 A. M. to 8:25 A. M. 11:45 A. M. to 12:05 P. M. 12:55 P. M. to 1:10 P. M.—	1'15"
Gant, T. J.	Car Report Clerk	138.45	8:50 P. M. to 9:45 P. M.—	55"
Smith, J. W.	Record Clerk No. 2	177.92	9:10 P. M. to 10:00 P. M.—	50"
Lower, P. H.	Record Clerk No. 3	177.92	11:30 P. M. to 12:01 A. M. 5:45 A. M. to 7:00 A. M.—	1'46"
Total Time Worked Daily.....				7'06"

"It will be noted that the proper 'Going Rate' in this territory has been applied to these positions of 'Gatemen' and that to make change in assignments of clerical forces to comply with protest that the Railroad has been required to establish 3 new positions and should not be further penalized, as the rate now being paid is correct and proper and fully compensated employes for class of work performed."

OPINION OF BOARD: Prior to November 16, 1940, the effective date of the present agreement, the duties of Gateman at the Union Station at Houston were performed by certain members of the clerical force on time which would otherwise have been devoted to their regular duties. They were paid the ordinary rate for their regular work. These employes, or at least all but one of them, were in Seniority District No. 2. The work performed was in Seniority District No. 4. When the present agreement became effective, the System Committee objected to the performance of work in one seniority district by the employes from another. The Carrier in consequence discontinued the practice which had been followed, and on December 3, 1940 issued a bulletin covering a newly created position with the title of "Gateman" and fixed a monthly rate of pay therefor of \$141.13.

Rule 51 of the current agreement provides as follows:

"The Wages for new positions shall be in conformity with the wages for positions of a similar kind or class in the seniority district where created. If there is no comparable position in the same district, then a similar position on some contiguous district is to be considered."

There was no position of a similar kind or class in the seniority district where the position was created, nor in any contiguous district. We are therefore faced with the same problem which was before this Board in Award 1586. As was there said, "The Board has authority to construe and enforce agreements but not to make them. * * * There being no standard applicable here, the Board cannot fix a rate without exceeding its power."

The record does not show that the carrier violated the provisions of the Railway Labor Act by refusing to negotiate in good faith with the employees in order to arrive at a mutually satisfactory rate of pay for the new position, nor that the rate fixed is arbitrary or unreasonable.

The employee's contention is only that the carrier has violated the current agreement. As there is no standard established by the agreement to govern the rate in question, we find no violation.

We cannot see that either Rule 50 or Rule 52 applies to the present controversy.

On the facts presented, this Board is without power to act in this case.

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 the Board has no jurisdiction to fix the rate of the new position, and that there is no ground for setting aside the rate fixed by the carrier and remanding the case for further negotiations.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 19th day of January, 1942.