

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

John W. Yeager, Referee

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**PARTIES TO DISPUTE:**

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

**THE TEXAS MEXICAN RAILWAY COMPANY**

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

(a) The correct rate of pay for the position of Yard Clerk at Laredo, Texas is \$110.00 per month. Also

(b) Claim that employes involved in or affected by the carrier's failure and refusal to apply proper rate of pay be compensated for all losses sustained.

**EMPLOYEES' STATEMENT OF FACTS:** In June 1941 a dispute arose as to the proper classification and rate of pay for position of Messenger at the Laredo freight station. The position paying \$68.64 per month.

A joint survey was made on July 2, 1941 by a representative of the carrier and the Brotherhood, a copy of which is attached hereto as Exhibit A.

Immediately after the joint survey was made the carrier abolished the position of Messenger, and created in lieu thereof a position of Yard Clerk, but refused to apply a Yard Clerk's salary, paying the Yard Clerk the same salary as had been paid the Messenger.

**POSITION OF EMPLOYEES:** The employes quote the following rules in support of their claim:

**Rule 2. CLASSIFICATION**

"Employes who are used in the compiling, writing and/or calculating incident to keeping records and accounts, transcribing and writing letters, bills, reports, statements and similar work (including those who examine and verify same), and to the operation of office mechanical equipment and devices shall be designated as clerks. The above definition includes Station, Storehouse and Warehouse Foremen, Checkers, Tallymen and Deliverymen, Ticket Sellers, Weighmasters, Car Distributors and Yard Checkers.

"NOTE: The assorting, distributing and delivering mail, waybills, delivery and filing messages, or purely messenger service, shall not be considered as clerical work."

**Rule 49. PRESERVATION OF RATES**

"Employes temporarily or permanently assigned to higher rated position, or to the performance of a higher rated class of work, shall

Messenger does not require more than ten per cent. of the time of the position. For this added assignment, the Carrier feels that an increase of \$12.60 for this new position is fair and equitable.

**OPINION OF BOARD:** The complaint here is that a yard clerk at Laredo, Texas is entitled to pay at the rate of \$110.00 per month, whereas he is being paid at the rate of \$68.64. In this connection the Carrier contends that as Messenger this employe received salary at the rate of \$62.40 per month and when he became Yard Clerk his salary was increased to \$75.00 per month. From an examination of the record it appears that the position of the claimant on this point is correct.

In June, 1941 a dispute arose as to the proper classification and rate of pay for the position of Messenger at the Laredo freight station. The occasion for the dispute was the character of the duties which were being performed by the Messenger.

On July 2, 1941, a joint survey was made which showed that the Messenger was performing the following duties: checking inbound and outbound trains, delivering freight notices and making collections, filling expense delivery receipts and other reports, delivering to and checking interchange reports with NDEM, recording waybills for inbound and outbound trains, and general messenger duties.

On July 9, 1941, following the joint survey the Carrier bulletined the position as Yard Clerk with a rate of pay of \$68.64 per month, and the position of messenger was abolished. Thus it appears that the employe was within the meaning of Rule 49 assigned to a higher rated position, or under Rule 24 he was assigned to a new position.

The contention of the Carrier is substantially that while the new position was created the duties of the position in addition to those of messenger does not require more than ten per cent of the time of the employe, and, hence, an increase in salary of \$12.60 is fair and equitable, also that there are insufficient facts upon which to base an award.

Having been assigned to a new position, the employe was entitled to the rate of pay for that position, if it had an established rate, by the terms of Rule 49. If it had no rate he was entitled to have one established agreeable to the terms of Rule 50. It will be noted here that under the rules no method is provided for the establishment of a rate of pay for new positions except under the provisions of Rule 50, or by acceptance of the rate set forth in the position bulletin.

Assuming that the employe was assigned to a higher rated position under Rule 49, he was entitled to the rate of that class which according to the only information presented by the record here was \$110.00 per month.

Assuming that under Rule 24 he was assigned to a new position he was entitled to have the rate of pay fixed agreeable to Rule 50, that is to have the salary fixed in conformity with salaries of analogous positions in comparable localities. Comparable of course does not exclude the same locality.

Taking either point of view we arrive at the same ultimate conclusion. The established rate of pay for yard clerk at Laredo, Texas was \$110.00 per month, and from the result of the joint survey of July 2, 1941, we find that this employe was assigned to a higher rated class of work and is entitled to the rate of pay of the higher classification under Rule 49.

It is the opinion of this Board that the claim should be sustained with the effective date of the award July 2, 1941, that being the date when the survey was made.

**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 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 claim is sustained with the effective date of the classification July 2, 1941.

#### AWARD

Claim sustained as per Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: H. A. Johnson  
Secretary

Dated at Chicago, Illinois, this 1st day of May, 1942.