

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**

**GULF COAST LINES, INTERNATIONAL-GREAT NORTHERN
RAILROAD COMPANY, SAN ANTONIO, UVALDE & GULF
RAILROAD COMPANY, SUGARLAND RAILWAY COMPANY,
ASHERTON & GULF RAILWAY COMPANY**

(Guy A. Thompson, Trustee)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that the Signal Clerk in the Chief Engineer's Office at Houston, Texas be paid at the rate of \$7.20 per day retroactive to July 11, 1938, the date the rate of pay was arbitrarily reduced by the carrier.

EMPLOYEES' STATEMENT OF FACTS: On July 10, 1938, and prior thereto, there was a position of Signal Clerk in the Chief Engineer's Office at Houston, Texas that was carried on the payroll as a Signaller with a rate of 90¢ per hour. The position was held by Mr. G. N. Hawley, a nephew of the Chief Engineer.

On July 11, 1938 Mr. C. E. Camp was placed on the position, and concurrently therewith the carrier arbitrarily reduced the rate of pay to 61¢ per hour.

POSITION OF EMPLOYEES: The following agreement rules were in effect at the time the carrier reduced the rate of pay and are quoted by the employees in support of this claim:

Rule 1.

"These rules shall govern the hours of service and working conditions of the following employes, subject to the exceptions noted below:

- (1) Clerks.
- (2) Other office and station employes, such as office boys, messengers, chore boys, train announcers, gatemen, checkers, baggage and parcel room employes, train and engine crew callers, operators of office and station equipment devices, telephone switchboard operators, elevator operators, office, station and warehouse watchmen and janitors.
- (3) Laborers employed in and around stations, storehouses and warehouses.

EXCEPTIONS

- (a) This agreement shall not apply to employes on coal and ore docks; or employes on elevators, piers, wharves or other waterfront facilities.

devote all of his time to signal drafting work and field work in connection with installation of flashing light signals, at which time the Carrier reverted to the former method; that is, employed an Assistant Signalman and assigned the clerical duties to him, being a new man, at the starting out rate of Assistant Signalman which was increased to the maximum rate of Assistant Signalman of 73¢ per hour as of January 1, 1939, and on December 1, 1939, position was changed to that of Signal Clerk at a daily rate which amounted to the same rate as was being paid the employe while carrying the title of Assistant Signalman at which time it was recognized that the position came under the scope of the Clerks' Agreement.

It is the contention of the Carrier that the rate of 90¢ per hour applied to the position of Signal Draftsman was established for the classification of work which he was performing as a draftsman and not by reason of the fact that he was performing clerical work; that the rate of 73¢ per hour was the rate established for the Assistant Signalman who was performing clerical duties and that the daily rate was obtained under formula as contained in Rule 61 of the Agreement with the Clerks' Organization effective April 1, 1939, which provided that employes covered by groups (1) and (2), Rule 1, who had been paid on a monthly, weekly or hourly basis, would be paid on a daily basis and that the conversion to a daily basis of monthly, weekly or hourly rate would not operate to establish a rate of pay either more or less favorable than was in effect; that on December 1, 1939, it was agreed to place the Assistant Signalman under the Clerks' Agreement with change in title to Signal Clerk; that the proper method of converting the hourly rate to that of a daily rate was by multiplying the hourly rate established for the position by eight, which equalled the hourly rate which had been established for the position.

OPINION OF BOARD: The system committee claims that there was a violation of Rules 65 and 76 of the current agreement which read as follows:

"Rule 65. Positions (not employes) shall be rated and the transfer of rates from one position to another shall not be permitted."

"Rule 76. 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 question before us is one of fact and concerns the status of G. N. Hawley prior to July 10, 1938, and that status of C. E. Camp who the committee contends succeeded to Hawley's work on July 11, 1938. The solution of the problem depends largely on whether Mr. Camp took over substantially the duties formerly performed by Mr. Hawley. The facts which the ex parte submissions establish are very meager.

Hawley was paid 90¢ an hour and apparently occupied a position as signal clerk although he was classified on the pay roll as signalman. He did both engineering work and clerical work. The carrier claims that owing to an increase in his engineering duties he was relieved of the clerical work which the claimant took over as a signal clerk on July 11, 1938, although he was carried on the pay roll for a time as assistant signalman. In effect, the carrier contends that the position filled by Mr. Camp was either a new position or the reestablishment of one which had been abolished. The claimant contends that he was in fact assigned to the same position as had been filled by Mr. Hawley, performed substantially the same duties, and was accordingly entitled to the same rate of pay.

We do not think that the record, which as we noted above is unsatisfactory, establishes the committee's claim. It does not show that there was in this instance a transfer of rates from one position to another, nor does it show that the established position was discontinued and a new one 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 the rules.

The problem before us here is analogous to that involved in Award 1519.

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 agreement has not been violated.

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 May, 1942.