Award No. 1843
Docket No. CL-1831

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

John W. Yeager, Referee

PARTIES TO DISPUTE:

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

THE ERIE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes, that the Carrier violates the rules of the Clerks' Agreement dated September 1, 1936 when it requires the occupant of position designated as Assistant Stores Report Clerk to perform higher rated duties at a lower rate of pay in violation of Rule 36 of the Clerks' Agreement and

That the Carrier shall now be required to establish a rate of pay commensurate with duties performed which shall be not less than $205.00 per month retroactive to March 8th, 1937, date that claim was first filed.

EMPLOYES' STATEMENT OF FACTS: Effective January 15, 1929, positions formerly classified as Stores Accountant, rate $185.00, and Assistant Stores Accountant, rate $160.00 per month, were abolished and new positions of Stores Report Clerk, rate $165.00 and Assistant Stores Report Clerk, rate $160.00 per month, and in addition position classified as Assistant Chief Acountant, rate $200.00 per month were established. The first two positions were later increased $5.00 per month and the Assistant Chief Accountant position was increased $10.00 per month.

The duties of position of Assistant Stores Report Clerk was to assist the Stores Report Clerk in preparation of Balance Statements, follow OM Orders, book Stores Department Collection vouchers, handle pass requests for Stores Department employes, and prepare yearly statement of scrap sold.

The duties on the position of Assistant Stores Report Clerk have changed as well as the responsibilities. This was brought about mainly by the growth of the Scrap Reclamation Plant and the abolishing of the position of Chief of Invoice Branch, rate $230.00 per month. The first mentioned had a great effect on this position as the entire accounting for this plant is now handled on the position of Assistant Stores Report Clerk. The Scrap Reclamation Plant also does all of the dismantling of cars and locomotives on the Erie Railroad, and consequently it involves preparing different cost statements such as Cost of Dismantling Equipment by types or series as well as Cost of Operating the Plant. The second mentioned also greatly affected the position due to the fact that the Chief Accountant took charge of the Invoice Branch and the Assistant Chief Accountant was put in charge of the Accounting Branch. This necessitated taking the different reports and other detail work which he had been performing and assigning same to the Assistant Stores Report Clerk. Among these duties were the handling of all re-

The Agreement dated December 1, 1928 contained the following Article:

Article 18:

"Clerks temporarily assigned to higher rated positions, will receive the higher rates while occupying such positions, except when filling positions vacant account of absence of regularly assigned employes still under pay. Employes temporarily assigned to lower rated positions will not have their rates of pay reduced."

This rule has likewise been violated by the Carrier. Due, however, to the former representation of the employes, no claim was progressed until the duties of the position had so changed that it was no longer recognizable with respect to its original duties. There was also in existence a dispute concerning representation of the employes which subsequently resulted in the election and recognition of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes as the representatives of the employes. The Board's attention is directed to the fact that this claim has been in process of handling since March 8, 1937 without success and has been referred to Division Officers on two occasions in an effort to dispose of same locally. Both of these efforts have failed, although in each instance the merit of this claim has been recognized by the officers with whom handled, including the highest officer designated for handling employe matters.

While the violation has existed for some time prior to September 1, 1936, the claim dates from March 8, 1937 and is indicative of the employes efforts to be fair in the matter. Some of the duties enumerated have been added to the position during 1937 and 1938, the first eight items under the statement of facts having been added during 1936, 1937 and 1938. At no time has the Carrier's officers denied the correctness of the statement of duties on this position, although they were called to their attention on March 8, 1937, March 24, 1938, June 14, 1938 and October 9, 1940.

The employes contend that the incumbent of the position of Assistant Stores Report Clerk is in fact occupying a higher rated position and for which he is receiving a lower rate of pay and requests your Honorable Board to sustain the employes claim in its entirety.

POSITION OF CARRIER: The question that is involved concerns rate of pay of E. J. Boyle, Assistant Stores Report Clerk, Hornell, N. Y., and is a question for mutual negotiations under the Railway Labor Act, and is not a grievance or dispute properly submitted to the Third Division, National Railroad Adjustment Board, and should be dismissed.

OPINION OF BOARD: This is a claim of the Brotherhood that at Hornell, New York the Erie Railroad Company, carrier, has, since September 1, 1936, the date when the existing Clerks' Agreement went into effect, in the designated position of Assistant Stores Report Clerk required the performance of higher rated duties in the position without giving it an appropriate rate of pay. The rate is $165.00 per month and the claimant insists that it should be rated at $205.00 per month and made retroactive to March 8, 1937, the date the claim was filed.

As a premise for further discussion, and decision on the claim it will be stated as a controlling principle that in the Clerks' Agreement consummated on September 1, 1936 the parties contracted with reference to positions as they existed on that date and such as were to be created or adjusted thereafter and not with reference to situations or positions which had ceased to exist before completion of the agreement, unless some right or rights were reserved for treatment or disposition under the new agreement. It must not be understood that this Division assumes to hold that the new agreement disposed of pending questions which had previously arisen, if there were such. Such matters were for disposition, agreeable to the

pre-existing relationship of reservations in the new one. Also resort may not be had to pre-existing conditions or practices to modify change or explain the operation or effect of the September 1, 1936 Clerks' Agreement where the terms and implications of the agreement in pertinent respects were complete, plain and unambiguous. This is but a statement of fundamental principle in contractual interpretation and application.

This brings us to the point where we are required to state, for the purposes of this case, that no adjustment of the position here involved, whether it may have been by addition of duties to, subtraction of duties from, change of title, or any other change, which took place before September 1, 1936, requires consideration. We must start from that date and consider what happened thereafter.

Logically then consideration of restoration of positions which had been abolished prior to September 1, 1936 is not required. Equally logically, if the position in question is entitled to be re-rated, it must be rated as a new position under the Clerks' Agreement of September 1, 1936. See rule 15.

There is no rule in the Clerks' Agreement here providing a method for rerating an existing position to which new duties are added, which duties have not been identified as belonging to a higher, or even a lower rated position. Therefore, if such be the true fact in this case, the matter is one, in the first instance, for negotiation between the parties.

The claim should be denied.

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 claim has not been sustained.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 16th day of June, 1942.