

Award No. 1861
Docket No. CL-1879

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Norris C. Bakke, Referee

PARTIES TO DISPUTE:

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

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

(Guy A. Thompson, Trustee)

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

(a) The correct rate of pay for the position of Head Prior Service Record Clerk in the Auditor's Office at Palestine, Texas is \$8.04 per day, retroactive to the date the position was created. Also

(b) Claim that employees involved in or affected by the above agreement violation be compensated for all losses sustained.

There is in evidence an agreement between the parties bearing effective date of November 1, 1940.

EMPLOYEES' STATEMENT OF FACTS: On November 26, 1940, the Carrier issued bulletin advertising position of Head Prior Service Record Clerk with a rate of \$6.30 per day.

On November 29th claim was filed requesting that rate of \$8.04 per day be applied to the position. On November 30th the bulletin of November 26th was cancelled.

On April 9, 1941, the position was again advertised by bulletin with the rate of \$6.30 per day.

The duties of the position are to supervise and direct the employees in the Prior Service Record Department; answer all correspondence in connection with the department and discharge the duties generally devolving upon a Head Clerk. There are six employees in this department.

There are other head clerks in the same seniority district as shown below:

POSITION	RATE	EMPLOYEES IN DEPARTMENT
Chief Clerk to Aud. Disbt.	\$ 9.61	18
Chief Clerk to Gen. Aud.	10.59	9
General Accountant	9.80	3
Supervisor Machine Bureau	8.24	6
Head Payroll Clerk	8.04	2

filling the position; that Rule 51, inasmuch as there is no position of similar kind or class, is without effect and should have no consideration as evidence in the case.

Should your Honorable Board assume jurisdiction, the Carrier respectfully petitions that you consider the evidence herein submitted by the Carrier, which it is felt will justify the rendition of an award supporting the action of the Carrier.

OPINION OF BOARD: The controlling facts in this case are not in dispute. The record shows that on November 26, 1940 the Carrier issued bulletin advertising position of Head Prior Service Record Clerk, rate \$6.30 per day. On November 29, 1940 petitioner filed complaint requesting that a rate of \$8.04 per day be applied to the position, petitioner's letter reading in part:

"The rate of pay you have established for this position is not in line with the provisions of Rule 51, paragraph (a) which provides the formula for arriving at the rate of pay for new positions.

"Our records disclose that we have a similar pay roll clerk in this seniority district with a rate of \$8.04 per day; therefore, claim is filed for payment at the rate of \$8.04 per day to the position of Head Prior Service Record Clerk, effective as of the date the position is established."

Following the complaint filed by the petitioner, on November 30, 1940 the Carrier cancelled its bulletin of November 26th and the position of Head Prior Service Record Clerk was not then actually created and filled.

On April 9, 1941 this same position was again advertised by bulletin, rated at \$6.30 per day and filled April 16, 1941. Concurrently therewith there was created a Prior Service Record Bureau, and placed in charge of the Head Prior Service Record Clerk. On this same day a position of Prior Service Record Clerk was also established, same to work in the newly created bureau under the supervision of the Head Prior Service Record Clerk. An additional position of Prior Service Record Steno-Clerk was also established on April 19, 1941 and three more positions of Prior Record Service Clerk were created on July 22, 1941, all being placed in the Prior Service Record Bureau, under the supervision of the Head Prior Service Clerk. At the time this dispute was heard before this Board, the following positions and rates of pay existed in this bureau.

"1 Head Prior Service Record Clerk	\$6.30 per day
4 Prior Record Clerks	5.90 per day
1 Prior Service Steno-Clerk	5.50 per day."

The bulletin of April 9, 1941, under the heading of "Brief Description of Duties," shows the duties of the position of Head Prior Service Record Clerk to be:

"Supervise, and assist in compiling payroll records of employees in service prior to January 1, 1937."

The occupant of the position in dispute lists his assigned duties as follows:

"Familiarize oneself with the Retirement Board's Instructions to Employers and Manual of Operations, and carry them out.

"Set up a System for the gathering of such data as is required, and divide the work as equally as possible among the employees under his jurisdiction, and see that such work is properly performed, besides taking a part of the work and doing it himself.

"Answer all correspondence pertaining to the department and keep up with all files.

"Keep up with the employees in the department, being able to answer all their questions pertaining to the work; report their time; absentees, etc.

"In fact, the department has been turned over to the Head Clerk to handle and see to it that the work goes as it should."

The petitioner contends that the position of Head Prior Service Record Clerk is in full charge of and responsible for all of the work of the Prior Service Record Department; that there are five other Head Clerks in the same seniority district with wage rates ranging from \$8.04 to \$10.59 per day; that prior to the creation of the position in question and the Prior Service Record Bureau, clerks preparing prior service records were under the supervision and direction of the Head Payroll Clerk, rate \$8.04 per day, and under the provisions of Rule 51 (a), the rate of the Head Prior Service Record Clerk should be not less than that of the Head Payroll Clerk.

The Carrier gives its reason for establishing the rate of \$6.30 per day on the position in question in the following statement:

"The representatives of the Carrier in establishing the rate of \$6.30 per day for the Head Prior Service Record Clerk gave full consideration to the duties, responsibility, knowledge and skill which would be required of the employee assigned to that position, and established a rate of pay for the position based thereon.

"It is the contention of the Carrier that the rate of \$6.30 per day fully compensates the employee assigned to the position of Head Prior Service Record Clerk, based upon the duties and responsibilities assigned to the employee filling the position; that Rule 51, inasmuch as there is no position of similar kind or class, is without effect and should have no consideration as evidence in the case."

At the hearing before this Board on this case, in response to a question of a Board Member, the representative on the Carrier stated that both the Head Payroll Clerk and the Head Prior Service Record Clerk report directly to the Chief Clerk to the Auditor of Disbursements, whose rate of pay is \$9.61.

Certain facts in this case stand out crystal clear. It is shown that when the position in question was first bulletined in November 1940 the petitioner contended that the proper rate for a Head Prior Service Record Clerk was \$8.04 per day, the same as Head Payroll Clerk; that the record shows that before the creation of this position in April 1941 the preparation of prior service records was done in the department of which the Head Payroll Clerk was in charge; that the Head Payroll Clerk supervises the work of 2 employees, whereas the Head Prior Service Record Clerk supervises 5 employees and is directly responsible for the work of the Prior Service Record Bureau, the same as other Bureau Heads are responsible for the work of their bureau, viz., the Machine and Payroll Bureaus, and that each Bureau Head, including the position in question, reports directly to the Chief Clerk to the Auditor of Disbursements, who is head of the entire department.

Rule 51 (a) under which this dispute is brought to the Board reads:

"The wages for new positions shall be in conformity with the wages for positions of similar kind or class in the seniority district where created."

Under this rule it is necessary for a new position to receive the rate of an existing position to show that (a) it is in the same seniority district and (b) is of a similar kind or class. It does not have to have equal responsibilities in the sense that duties and services are identical, nor does it necessarily require supervision of work of equal importance in the sense just mentioned. It may still be of equal importance and responsibility.

It is here shown that the positions of Head Payroll Clerk and Head Prior Service Record Clerk are each a Head Clerk in charge of a specific Bureau, and that each reports directly to the head of the department. The Head Clerk in charge of the Prior Service Record Bureau is surely of the same kind or class as the Head Clerk of the other Bureau. The Carrier of its own volition classified this new position as Head Clerk and placed it in charge of a Bureau and if the Carrier thought at that time that the position was not a Head Clerk in fact, it should not have so classified it. If this position is not a Bureau Head in fact, the Carrier would not have created the Prior Service Record Bureau and would not have created a position of Head Clerk to take charge of it.

The Carrier removed this prior service record work out from under the supervision and direction of the Head Payroll Clerk; removed it from the Payroll Bureau and created a new and separate Bureau for it; placed a Head Clerk in charge, subordinate and responsible only to the Chief Clerk in charge of the entire department. This would indicate that the Carrier recognized the importance and responsibility in relation to this work as being on a par with that of the other Head Clerks.

The Head Payroll Clerk supervises only two employes, and if as Carrier seems to argue, the position here in dispute performs only routine clerical work, the Carrier did not need the supervision and important directive duties the occupant of the position of Head Prior Service Clerk claims he performs. It is the opinion of this Board that the Carrier would not have removed the prior service record work from the Payroll Bureau out from under the supervision and direction of the Head Payroll Clerk and established a new Bureau and placed a Head Prior Service Record Clerk in charge thereof, unless the Carrier considered him to be a Head Clerk in fact. The Carrier was privileged to leave this work where it was in the Payroll Bureau if it elected to do so.

The only serious contention made by the Carrier is that the work of the Claimant is not of "similar kind or class" with that of the Head Payroll Clerk, admittedly the only employe in the Seniority District involved being paid \$8.04 per day, the amount requested by the employes here to be paid to the Claimant. To support this contention the Carrier argues that the only similarity in kind or class is "Head Clerk" which contention, if true, would not support the claim (Award 1077), but the record clearly shows, as we have already indicated, that there are several points of similarity in kind and class that substantiates Claimant's position as set forth in "Position of Employes."

In Award No. 1516—one of the awards relied upon by the Carrier here to deny the claim, involved an identical new position's rule,—The Carrier argued that claimant had not qualified for the new position and suggested certain tests that should be applied and conceded inferentially that had they been established the claim should be sustained. While the name Head Clerk was not involved, we think the work analysis there as compared with the situation in hand is in point, and the record shows the tests to have been met.

Carrier's chief point in saying that the new position does not involve similar work and responsibility is that it does "not require any knowledge of payroll rates of pay or payroll accounting." However, it does not follow that the prescribed and admitted duties of Claimant are any less responsible. In a very real sense they may be more so, because of the fact that the work is new and the handling and supervision of prior service records in connection with the Retirement Plan is important, as much so as the payroll. In view of the fact that the Head Payroll Clerk has been performing his duties over a period of time this element of responsibility is not present.

Another test which has been used in previous awards in relation to new positions is whether the position it is compared to is analogous. It must be admitted that the position here created was analogous to that of the Head Clerk in the way it was set up.

We are therefore of the opinion that the Claimant has established his case by a fair preponderance of the evidence and that his claim should be sustained.

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 Rule 51 (a) governs and the correct rate of pay for the position of Head Prior Service Clerk is \$8.04 per day.

AWARD

Claim (a and b) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 29th day of June, 1942.