

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Norris C. Bakke, 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 carrier violated the Clerks' Agreement when, at close of business on August 10, 1941, it abolished position of Cashier-Accountant and concurrently therewith created a position of Ticket Clerk at a lower rate of pay. Also

(b) The carrier violated the Clerks' Agreement when it assigned the Cashier Accountant duties to the Ticket Agent at a lower rate of pay. Also

(c) The carrier violated the Clerks' Agreement when it assigned the duties performed by the Agent to the newly created position of Ticket Clerk at a lower rate of pay. Also

(d) Claim that employes involved in or affected by the above agreement violations be compensated for all losses sustained.

EMPLOYES' STATEMENT OF FACTS: This claim was brought about as a result of claims filed with the carrier which was decided by this Board in Award No. 1628, Docket CL-1635, which established a rate of \$260.06 per month for the Cashier-Accountant when assigned on a 365 day annual basis.

On August 10, 1941, the force in the ticket office consisted of the following:

POSITION	ANNUAL ASSIGNMENT	RATE OF PAY
Ticket Agent	365 days	\$245.20 per mo.
Cashier-Accountant	365 "	260.06 " "
Ticket Clerk	365 "	194.17 " "
Ticket Clerk	365 "	194.17 " "
Ticket Clerk	365 "	181.97 " "

The Ticket Agent spent his entire tour of duty at the ticket windows selling tickets and furnishing information to the public.

The Cashier spent his entire time in performing Cashier and Accounting work, as was pointed out by the carrier in the second paragraph of their position in Docket CL-1635.

On August 4, 1941, the carrier advised the employes that unless Docket CL 1635 was withdrawn the carrier would abolish the position of Cashier-

The Carrier shows, in the form of exhibits, copy of correspondence between the representatives of the Carrier and the representative of the Organization, which outlines the positions of the parties to this dispute and which the Carrier feels indicates conclusively that the rearrangement of the service and force in the Depot Ticket Office at Houston was not a violation of any of the rules contained in the current Agreement with the Clerks' Organization and respectfully petitions your Honorable Board, from the evidence herewith submitted, to render an award supporting the position of the Carrier in this case.

OPINION OF BOARD: A study and analysis of the respective "positions" of the parties to this dispute indicates that the solution of the principal problem involved depends upon the meaning of the "rate of pay" of the position of Cashier-Accountant at the time that position was abolished.

The question was part of the dispute in Award 1628 where the claim (a) was "with a rate of \$218.02 per month" and this claim was sustained.

However it is to be noted that the incidents which gave rise to this claim took place prior to that award, when the position carried a 365 day annual assignment and monthly salary of \$260.06 from November 16, 1940 (effective date of agreement) to August 10, 1941, when the position was abolished.

At the same time, the Ticket Agent also had an annual assignment of 365 days and his monthly salary was \$245.20, so it becomes apparent when the Ticket Agent was assigned to take over the duties of the Cashier-Accountant he should receive the higher rate for "performing such work" as provided in Rule 50. Denial of this was a violation.

The only provision in the agreement which gives the Carrier the right to abolish a position is 52 (b) and then only "where the duties of a particular position materially decrease in volume." There is no evidence here to indicate there was any decrease in the volume of the duties of the Cashier-Accountant, and it is inconceivable that there would be in the increase of sales of tickets from \$35,657.27 to \$75,214.14. Hence this rule was also violated.

In the absence of any definition of "rates of pay" it must be assumed that it means "compensation received" and since the Cashier-Accountant's rate of pay of \$260.06 was covered by the agreement it remained "in effect until changed by mutual agreement" as provided in Rule 53.

It is not the purpose of this award to set aside Award No. 1628 because that was based on a claim brought in behalf of the Cashier-Accountant and he is bound by it, but under the circumstances before us he is entitled to compensation for all losses sustained based on the claim in this docket.

Another matter which we cannot overlook is the charge of the Employes that the action by the Carrier was in retaliation of the Cashier-Accountant's refusal to withdraw his claim in Docket CL-1635 (Award 1628). While the Carrier denies any such threat, the fact that it all happened the day after the employe refused to withdraw his claim is fairly strong circumstantial evidence of what probably transpired and if it did would be sufficient ground for our setting aside the action of the Carrier, otherwise the Carrier could deny access to this tribunal by the method suggested.

We do not believe that there was any violation of the agreement in bulletining and awarding the new position of Ticket Seller. While it is true that the Ticket Agent said his time was all taken up by selling tickets, the record discloses that "selling tickets" was a minor part of his duties and only temporarily occasioned by the increase in business. His duties were not assigned to a lower rated employe.

Our conclusion therefore is that the claim (a) should be sustained as to the abolishment of the Cashier-Accountant's position (b) sustained (c) denied and (d) sustained as it relates to (a) and (b) above.

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 Carrier violated the rules of the agreement and the claim should be sustained as indicated.

AWARD

Claim sustained as indicated.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 10th day of August, 1942.