

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

PARTIES TO DISPUTE:

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

ERIE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks that the Carrier violates the spirit and intent of the Clerks' Agreement at Ferrona Yard, Sharon, Pa. when it requires an employe at that point to perform higher rated work at lower rate of pay, and

That Carrier shall now be required to establish a rate of \$6.15 per day on this position retroactive to September 14, 1941, plus the 1941 wage increases.

That employe T. M. Gibbons and all other employes be reimbursed for any and all wage loss sustained by reason of being paid a wage of less than \$6.15 per day plus wage increase of September 1, 1941 and December 1, 1941.

EMPLOYEES' STATEMENT OF FACTS: Prior to the issuance of Bulletin No. 428 of August 9, 1941, conference was held between Superintendent Baker and Division Chairman Griffith with respect to the hours of service on the new position. It was agreed that new position would work the hours from 4:00 P. M. to 1:00 A. M. and permit employe Hanrahan to work first trick from 10:00 A. M. to 7:00 P. M. Employe Hanrahan's rate of pay is \$6.15 per day, plus 1941 wage increases. Bulletin No. 428 was issued on this basis. The rate of pay at time of conference was not settled in conference. Upon position being advertised at rate of \$5.20 per day, Employes Exhibit "A", protest was entered alleging violation of the principles contained in Rule 37 of the Clerks' Agreement. As a result of protest, Management arbitrarily readvertised the position changing the hours of service and the qualifications on the bulletin (See Employes' Exhibit "B"). Rate of pay, qualifications and action of Management were protested.

POSITION OF EMPLOYEES: There is in existence between the parties bearing an effective date of September 1, 1936, an agreement which contains the following rules:

Rule 18 (Rights when Assignment is changed) reads as follows:

"(a) When the established starting time of a regular position is changed thirty (30) minutes or more for six (6) consecutive working days, the number of assigned days per week is changed for a period of four (4) weeks or more, or the designated rest day changed, the employes affected may, within five (5) days thereafter, upon thirty-six (36) hours advance notice, exercise their seniority rights to any position, for which qualified, held by a junior employe. Other employes affected may exercise seniority rights in the same manner.

"(b) When the established starting time of an assigned relief position is changed for one (1) hour or more regularly on one or more of

There was no written **understanding**. Hanrahan proposed it so he (Hanrahan) could work day hours and retain his rate of pay. The proposed arrangement was never made effective. Bulletin No. 428 was superseded by Bulletin No. 453.

This claim of the Clerks should be denied for the following reasons:

1. When the additional new position was established at Ferrona in August 1941 full consideration was given to Rule 37, and the rate of pay is commensurate with the duties performed.
2. T. M. Gibbons was selected and assigned to the position on the basis that he was qualified to perform the duties, and with the full understanding that Gibbons had had no experience as a rate clerk and was not qualified to check rates and tariffs.
3. Nothing in Rules and Regulations effective September 1, 1936 establishes pay rates except Rule 37.
4. Position was established on the basis of assisting yard clerk for four hours per day and perform billing during the balance of the day, and "full consideration was given to the duties and responsibilities of the new position in determining the pay rate under Rule 37 requirements."
5. Hanrahan, bill clerk, and rater, now paid \$6.95 per day.
Gibbons, biller and assisting yard clerks, now paid \$6.00 per day.
6. Under facts and circumstances in this case, adjustment in rate is not justified.

OPINION OF BOARD: This dispute involves rate of pay for a new position, titled bill clerk, Ferrona Yard, which the Carrier bulletined September 2, 1941, at rate of \$5.20 per day.

The Employees protested the \$5.20 per day rate, contending the provisions of rule 37 had not been complied with.

Rule 37 reads:

"In establishing the salaries for new positions, full consideration will be given to the duties, responsibilities and rates of pay of analogous positions (of similar kind and class) in comparable localities."

The Employees ask for a rate of \$6.15 per day retroactive to September 14, 1941, on the contention that the duties of the position in question are analogous to those of the rate and bill clerk (Ferrona) rated at \$6.15 per day.

The Carrier states the \$5.20 rate was established under rule 37 in accordance with the duties and responsibilities of positions of similar kind and class at Briar Hill Yard, Youngstown, and Warren which were rated at \$5.20 or less per day.

The record shows the position in question devotes about 4 hours per day to bill clerk's work and 4 hours to yard work, whereas, the rate and bill clerk, rated at \$6.15, devotes about 6 hours per day to rate and bill clerk's work and 2 hours to yard work.

In view of the conflicting statements of the parties and the inadequacy of evidence in respect to the duties and responsibilities of positions in comparable localities considered to be analogous to the position of bill clerk at Ferrona Yard, as required by rule 37, the Board finds it impossible to decide the question and therefore remands the dispute for determination of facts, conference, and disposition on the property.

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 dispute is remanded in accordance with the Opinion, with right to resubmit if not disposed of on the property.

AWARD

Claim remanded in accordance with the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 25th day of May, 1943.