

**Award No. 2239**

**Docket No. CL-2211**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**Fred L. Fox, Referee**

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**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 RAILWAY COMPANY**

**(Guy A. Thompson, Trustee)**

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

(a) The carrier violated the Clerks' Agreement by failing and refusing to rate the position of Assistant Timekeeper, advertised in Bulletin No. 11-42 of March 10, 1942, at \$8.14 per day. Also

(b) Claim that all employees involved in or affected by the agreement violation be compensated for all losses sustained, retroactive to March 16, 1942.

**EMPLOYEES' STATEMENT OF FACTS:** On March 15, 1942 we had the following timekeeping positions and rates of pay in the Timekeeping Department at Palestine, Texas:

|                  |                |
|------------------|----------------|
| Chief Timekeeper | \$9.03         |
| Utility Clerk    | 8.49           |
| Asst. Timekeeper | 8.14           |
| Asst. Timekeeper | 8.14           |
| Total            | <u>\$33.80</u> |

The Utility Clerk handled the station and roadway timekeeping and was paid a differential of 35¢ above the Asst. Timekeepers in order that he might, at times, assist the Chief Timekeeper in checking time slips for train and engine men.

At the close of business March 15, 1942, the position of Utility Clerk was discontinued and concurrently therewith a position of Asst. Timekeeper was created with a rate of \$6.95 per day—\$1.54 less than the Utility Clerk was paid, and \$1.19 per day less than the Asst. Timekeepers' rate, with the result that on March 16, 1942 we still had four timekeeping positions but a reduction of \$1.54 in the payroll, as follows:

On May 7th, 1942, Machine Bureau which had been established in the Auditor's office, Palestine, May 1st, 1941 was abolished and all the timekeeping which had been transferred to the Bureau was restored to the Assistant General Manager's office and on that date position of Timekeeper No. 2 was re-established with an annual assignment of 306 days rate \$8.14 per day as that position was included in the claim covered by Award No. 1615.

On May 23, 1942, position of Assistant Chief Timekeeper was added to the timekeeping department with annual assignment of 306 days, rate \$8.49 per day, which rate was established by agreement with the General Chairman of the Clerks' Organization, see Carrier's tabulation No. 8.

**POSITION OF CARRIER:** An analysis of the timekeeping force in the Assistant General Manager's office at Palestine, Texas, November 1st, 1940 to June 1st, 1942 as indicated in the Carrier's Statement of Facts will reveal that on November 1st, 1940, the force consisted of one Chief Timekeeper, and three timekeepers with an annual assignment of 365 days and one timekeeper with an annual assignment of 306 days. That under Award No. 1615 the Chief Timekeeper and Timekeepers Nos. 1, 2 and 3 had their annual assignment changed to 306 days and their rates of pay increased so that the earnings of the employees would be the same for 306 days service as they were for 365 days service; that Timekeeper No. 4, whose assignment was already on a 306 day annual basis was not affected by Award No. 1615. Award No. 1615 increased the Chief Timekeeper's daily rate from \$6.90 per day to \$8.23 per day and Timekeepers Nos. 1, 2 and 3 from \$6.15 per day to \$7.34 per day, but due to the fact that Timekeeper No. 4 was not involved in Award No. 1615 the daily rate of that position remained without change.

On December 1, 1941 under Mediation Agreement effective as of that date, the daily rates of employees were increased 80¢ per day which established daily rates for Timekeepers in Assistant General Manager's office as indicated in Carrier's tabulation No. 7.

The daily rate of Timekeeper No. 4 at the time it was abolished November 29th, 1941 was \$6.15 on 306 day annual assignment. When the position was re-established under Assistant General Manager's Bulletin 11-42 of March 10, 1942, it was assigned 306 days per annum with a daily rate of \$6.95, which included increase of 80¢ per day granted clerical employees under Mediation Agreement dated December 1st, 1941 and it is the contention of the Carrier that the position was properly rated at \$6.95 per day instead of \$8.14 per day as claimed by the Organization.

The Carrier feels that the evidence herein submitted justifies your Honorable Board in denying the claim of the employees.

**OPINION OF BOARD:** On March 10, 1942, the Assistant General Manager of the Carrier, stationed at Palestine, Texas, posted Bulletin No. 11-42, advertising the position of Assistant Timekeeper in his office, fixing the rate of pay at \$6.95 per day. The position was stated in the bulletin to be a "new position," to be "permanent," and the duties thereof were to "Handle Station and Roadway timekeeping and work in connection with such rolls." Petitioner bid for and was assigned to the position and entered upon his duties on March 16, 1942. At that time two other Timekeepers were employed in the Palestine office, on a 306 days per year assignment, the same as that of petitioner, and were paid \$8.14 per day. There is nothing in the record indicating any distinction in the duties of the three Timekeepers, and it is assumed that each did relatively the same work. Petitioner's claim is that he should, from the beginning of his service, have been paid \$8.14 per day, and that the difference of \$1.19 per day should be paid to him, beginning with March 16, 1942. The current agreement, effective November 1, 1940, governs the case, and petitioner relies upon sub-section (a) of Rule 51, Rule 50 and Rule 52 thereof, which, for convenience, are quoted in the order named.

**"RULE 51. New Positions**

"(a) 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."

**"RULE 50. Preservation of Rates**

"(a) Employees temporarily or permanently assigned to higher rated positions or work shall receive the higher rates for the full day while occupying such position or performing such work; employees temporarily assigned to lower rated positions or work shall not have their rates reduced.

"(b) A 'temporary assignment' contemplates the fulfillment of the duties and responsibilities of the position or work during the time involved.

"(c) Assisting a higher rated employee, due to a temporary increase in the volume of work, does not constitute a temporary assignment."

**"RULE 52. Adjustment of Rates**

"(a) Established positions will not be discontinued and new ones created under the same or different title covering relatively the same class or grade of work, which will have the effect of reducing the rate of pay or evading the application of these rules.

"(b) Where the duties of a particular position materially decrease in volume justifying abolishing the position, the remaining duties will be re-assigned in accordance with Rule 50."

The contention of the Carrier is that \$6.95 per day is the proper rate of pay for the position to which petitioner was assigned, which it contends was that of Timekeeper No. 4, and in support of its position makes the following explanation of events leading up to petitioner's employment. It says that on July 21, 1941, there were employed in the Timekeeper's office in Palestine, a—

Chief Timekeeper, rate \$6.90 per day, assigned 365 days per annum  
 Timekeeper No. 1, rate \$6.15 per day, assigned 365 days per annum  
 Timekeeper No. 3, rate \$6.15 per day, assigned 365 days per annum  
 Timekeeper No. 4, rate \$6.15 per day, assigned 306 days per annum  
 Utility Clerk, rate \$6.90 per day, assigned 306 days per annum

On November 29, 1941, the position of Timekeeper No. 4 was abolished.

Effective December 1, 1941, the assignment of the Chief Timekeeper, and Timekeepers No. 1 and 3, was changed to 306 days per annum, and wages readjusted in accordance with Award No. 1615 of this Division. Allowing for a wage increase of 80 cents per day, effective as of said date, the rate of pay of the Chief Timekeeper was \$9.03 per day; that of Timekeepers No. 1 and 3, \$8.14 per day; and that of the Utility Clerk \$7.70 per day. The position of Utility Clerk was afterwards abolished, and when this was done the position of Assistant Timekeeper was advertised as stated above, so that, on and after March 16, 1942, the set-up was as follows:

Chief Timekeeper, rate \$9.03 per day, assigned 306 days per annum  
 Timekeeper No. 1, rate \$8.14 per day, assigned 306 days per annum  
 Timekeeper No. 3, rate \$8.14 per day, assigned 306 days per annum  
 Timekeeper No. 4, rate \$6.95 per day, assigned 306 days per annum

Later, on May 7, 1942, a timekeeper, designated as Timekeeper No. 2, was employed and paid \$8.14 per day, on a 306 days per annum assignment; and, still later, on May 23, 1942, an Assistant Chief Timekeeper was employed on the same basis of assignment, and paid \$8.49 per day.

The Carrier contends that notwithstanding the form of Bulletin No. 11-42, posted March 10, 1942, which refers to the position being advertised as a "new position," what was done was nothing more than a re-establishment of the position of Timekeeper No. 4, carrying a rate of pay of \$6.95 per day. That the rate of pay of Timekeepers No. 1 and 3, \$8.14 per day, grows of the fact that these positions were originally assigned for 365 days per annum, and when this assignment was reduced to 306 days, an adjustment of the day wage resulted, so that the annual wage would not be reduced, and an increase of daily wage from \$6.15 to \$7.34 was allowed, to which was added the general increase of 80 cents per day, making the total \$8.14 per day; whereas, Timekeeper No. 4, being always assigned 306 days per annum, was never in position to get the benefit of the award which favored Timekeepers Nos. 1 and 3. It is also urged, and it is apparently true, that if the position of Timekeeper No. 4 had not been abolished, but had been continued to and beyond March 16, 1942, no question could have arisen as to the rate of pay for that position. Therefore the controlling question is whether the position assigned to petitioner was a new position, or merely a re-establishment of the position of Timekeeper No. 4, carrying with it the same rate of pay as existed when it was abolished.

It is obvious, and we understand it to be admitted, that if petitioner was given a new position, then, under sub-section (a) of Rule 51, he would be entitled to the same rate of pay as other timekeepers.

Petitioner, in controverting the claim of the Carrier that there was a re-establishment of the position of Timekeeper No. 4, says that, under Rule 20 of the agreement, a discontinued position may not be reinstated after the expiration of ninety (90) days from date of discontinuance. We do not think this position tenable. The rule reads:

**"RULE 20. Reinstating Positions**

"(a) When a position is discontinued and reinstated within ninety (90) days, the last regular assigned incumbent, if still in service and bidding for same as provided in Rule 9, with the advice that he is the 'last regular assigned incumbent,' will be assigned without regard to seniority, provided no senior unassigned employe bids on the position.

"(b) When an employe returns to a reinstated position under this rule, other employes who were disturbed account the temporary reduction of force may return to their former positions in the same manner as provided above."

In our opinion, a discontinued position may be reinstated at any time; but if reinstated after the expiration of ninety (90) days, the last assigned incumbent has no rights beyond those given him by his seniority; whereas, if reinstated within ninety (90) days, he is entitled to preference, unless some senior unassigned employe bids on the position.

Admittedly the position of Timekeeper No. 4 was abolished. Abolish means "To do away with; annul or make void; to put an end to; destroy." New Standard Dictionary. To discontinue may have the same general meaning in some cases, but in others it means an interruption or break in the continuity of any work, or the exercise of the duties of a particular position. We are not disposed to rest our decision on the technical meaning of words, but rather upon what we conceive to be a common sense view of the situation, with due regard to the agreement. We think Rule 51 controls, and should be given effect. When the position of Timekeeper No. 4 was abolished, that was the end of that position, and the rate of pay attached thereto. If need for the character of work which a timekeeper was called upon to do afterwards developed, and such a position was bulletined, it was a new position, such as the bulletin in this dispute defined it, and not a re-establishment of the position abolished; and under Rule 51 the rate of pay was required to "be in conformity with the wages of similar kind or class in the seniority district where created."

We do not base our holding on the inequality, as between employes, which would result from upholding the contention of the Carrier. If the Carrier had only discontinued the position, and by apt and proper language, had evidenced that intention, and then later had bulletined the position as a reinstatement, the inequality which would have resulted would not have warranted the decision we now make. However, this was not done. The position was abolished. The position bulletined was described as a new and permanent position. It amounts to the creation of a new job, and the rate of pay is governed by Rule 51. To hold otherwise would be to ignore this rule by resort to a finding that a job once abolished, and which Carrier admits was "out of existence for approximately three and one-half months" could nevertheless be re-established, without at the same time giving force to provisions of Rule 51 which was intended to, and does, insure equality of pay to employes doing relatively the same work. The laudable purpose of this rule should not be nullified, unless required by most compelling reasons and circumstances, and we do not think they exist in this dispute. The claims of the petitioner will 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 employe involved in this dispute are respectively carrier and employe 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 current agreement in not establishing a rate of pay of \$8.14 per day for the position under its Bulletin No. 11-42, posted March 10, 1942.

#### 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 4th day of August, 1943.