

Award No. 2385

Docket No. CL-2347

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

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

WABASH RAILROAD COMPANY

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

(a) Carrier disregarded Rule 11, paragraph (b) of the Schedule for Clerks effective August 1, 1929, and instructions shown on face of Form 1714, when issuing clerical bulletin form 1714, dated July 21, 1941, advertising clerical position in the freight office at Lafayette, Indiana; failing to give the position a title and establishing a daily rate less than the rate paid for work of a similar class and kind in the seniority district involved.

(b) Position to be rebulletined with a title of Demurrage Clerk, and daily rate adjusted from present rate of \$5.86 to \$6.01 per day to conform to rate established for work of similar class and kind on the seniority district where created. Such adjustment to be effective as of date position was established, on or about July 31, 1941 and the occupant or occupants of said position compensated accordingly.

EMPLOYEES' STATEMENT OF FACTS: Form 1714, bulletin notice, was issued by Superintendent, Montpelier Division, under date of July 31, 1941, advertising clerical assignment in the freight office at Lafayette, Indiana, designating the position as "clerk," with rate of \$5.06 per day. Hours of assignment 6:00 A. M. to 3:00 P. M., six days per week.

Instructions printed on the face of Form 1714, stipulate that a clerical position will be defined, as indicated opposite Caption "A" of the instructions, and title will be inserted in the space provided opposite the printed word "Position" and Caption "A," and preceding the printed word "clerk." A true copy of bulletin notice, Form 1714 dated July 31, 1941, is submitted as Employees' Exhibit "A" in support of the above statement of facts.

POSITION OF EMPLOYEES: Carrier displayed a complete disregard for the provisions of Rule 11, paragraph (b) of the Schedule for Clerks when it failed to bulletin clerical position in the freight office at Lafayette, Indiana, with a title, and refusing to rebulletin same with a title as required under the rule, and to define the position as provided for in the instructions printed on the face of the standard bulletin Form 1714, submitted as Employees' Exhibit "A." Paragraph (b) of Rule 11, Schedule for Clerks, is quoted below:

"(b) New positions or vacancies will be promptly bulletined in agreed upon places accessible to all employees affected for a period of five (5) days on the districts where they occur (except in the general offices at St. Louis, where the period will be two (2) days.) Bul-

with in that connection, and the rate applied to the position involved was in keeping with the rate for positions of similar kind or class on the seniority district.

When consideration is given to these facts, it is obvious that the contention of the Committee should be dismissed and the claim denied.

OPINION OF BOARD: On July 31, 1941, the Carrier bulletined a clerical position in the freight office at Lafayette, Indiana, on Form 1714, as "Clerk" with rate of pay at \$5.06 per day. The System Committee of the Brotherhood contend that this constituted an improper bulletining of the position in that it was not properly titled and fixed an incorrect rate of pay.

With reference to the designation of the position in the bulletin, the pertinent part of the applicable rule is: "New positions or vacancies will be promptly bulletined in agreed upon places accessible to all employes affected. . . . Bulletin to show location, title, hours of service and rate of pay." Rule 11 (b), Clerks' Schedule. The record also discloses the Form 1714 was an agreed to form. That the position bulletined was a new one, proper to be bulletined, is not disputed in the record.

The Carrier contends that similar positions had been bulletined for many years as "Clerk" and that it now constitutes a practice. With this, we cannot agree. When the agreement is plain and definite, it must govern. A practice can be enforced only when the agreement is silent with reference thereto, the very purpose of the agreement being to supersede or modify existing practices. The method of bulletining new positions having been made a subject of contract, we must refer to the contract in determining whether requirements as to bulletining have been met.

The word "Clerk" as used in the Clerks' Agreement is a generic term which ordinarily applies to any employe coming under that agreement. When the contract was worded so as to require that a bulletin show the title of the position, it certainly did not mean that the generic term "Clerk" constituted an adequate title. If it did, there would have been no reason for including the provision in the agreement. We think that a reasonable interpretation of the rule and the agreed to form for bulletining new positions contemplated the use of a title which would indicate the major duties of the position bulletined. We are obliged to hold that the bulletining of the position as "Clerk" does not meet the requirements of the rule. The position should be rebulletined under a title meeting the requirements as hereinbefore expressed.

Complaint is also made that the rate of pay for the position was inadequate. The applicable rule is: "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 2 (i), Clerks' Schedule. The record is conflicting as to the duties of the position. We think the greater weight should be given to the statements of Merle Billue, a former occupant of the position, and J. P. Shaughnessy, the Cashier of the local freight office at Lafayette. Their statements indicate that approximately five hours time is used in checking team and industrial tracks, in notifying consignees of arrivals and placements and in keeping car demurrage records. The remainder of the eight hour assignment is devoted to miscellaneous duties.

The Carrier relies upon an investigation of the duties of the position by Assistant Trainmaster R. J. Cripe in sustaining the designated rate of pay. In making the investigation, he failed to interview the employes on the property who were familiar with the facts. The source of his information is not shown but it is evident that he was either misinformed or made the investigation on an unusual day.

Without reciting all of the evidentiary facts contained in the record, we are of the opinion that the duties of this position were "of similar kind or class" as those of Clerk D. E. Thomas at Peru, Indiana, whose basic rate of

pay at the time this claim was filed was \$6.01 per day. Claimants are, therefore, entitled to an adjustment of pay on this position beginning on July 31, 1941, after taking into consideration raises in pay granted during the period involved.

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 employees involved in this dispute are respectively carrier and employees 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 bulletining of a position within the scope of the Clerks' Agreement as "Clerk" is not a compliance with the provisions of Rule 11 (b) of the Clerks' Agreement. The position in question is of similar kind and class as that of Clerk D. E. Thomas at Peru, Indiana, and an adjustment of pay should be made on the basic rate of pay of that position.

AWARD

Claims (a) and (b) sustained in accordance with the foregoing opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 19th day of November, 1943.