# Award No. 2586
# Docket No. CL-2442

## NATIONAL RAILROAD ADJUSTMENT BOARD
## THIRD DIVISION

**Bruce Blake, Referee**

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## PARTIES TO DISPUTE:

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

## SOUTHERN PACIFIC COMPANY (PACIFIC LINES)

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

(a) The Carrier violates and continues to violate the rules of the Clerks' Agreement when it declines and continues to decline to compensate Messrs. Roy E. Elwell and Cecil L. Ballew and/or their successors, Truck Drivers, Roseville, California, at rate of 77½¢ per hour in lieu of 70½¢ per hour they are now receiving.

(b) Messrs. Roy E. Elwell and Cecil L. Ballew and/or their successors be compensated at rate of 77½¢ per hour retroactive to July 30, 1942, the date upon which claim was initiated.

**EMPLOYES' STATEMENT OF FACTS:** In the stores Department of the Carrier at Roseville, California, there are in operation two trucks, one a 1929 Model-A-Ford, one and one-half ton truck; the other a 1941 Model International, one and one-half ton truck.

The drivers of these trucks are paid at the rate of 70½¢ per hour.

**POSITION OF EMPLOYES:** There is in effect between the parties an Agreement as to rules and working conditions, and bearing effective date of October 1, 1940; the employes involved in this claim are covered by that Agreement.

As a result of Arbitration Award in 1927, and which became effective as of January 1, 1927, there was established for all positions then in existence on Southern Pacific (Pacific Lines) and coming within the scope of Clerks' Agreement with the Carrier rates of pay and classifications; these rates of pay and classifications were, for ready reference, set out on forms designated and thereafter known as Form C-21 Final.

For ready reference of the Board, we show as a part of this submission as EMPLOYES' EXHIBIT "A," Page 14, Sacramento Division, Form C-21 Final, whereon is shown position No. 11, Truck Driver, Roseville, rate 55½¢ per hour (present rate 70½¢ per hour). The underscoring on EXHIBIT "A" is ours merely for the purpose of enabling the Board to more readily identify the position on the Exhibit.

We also show as a part of this submission as EMPLOYES' EXHIBIT "B," copy of Page 8, Sacramento District Stores, Form C-21 Final, which shows Truck Drivers (Large Trucks), rate 62½¢ per hour, present rate 77½¢; also Truck Drivers, rate 55¢ per hour, present rate 70¢ per hour.

Rules 4 and 5 are as follows:

"RATING POSITIONS

RULE 4.

"Positions (not employes) shall be rated and the transfer of rates from one position to another shall not be permitted."

"NEW POSITIONS

RULE 5.

"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."

The carrier submits that the above-quoted rules in no way support the petitioner's contention that when the small truck was replaced by a truck of larger size and capacity in 1929 there was an obligation to change the rate of the position of truck driver. In accordance with Rule 4, the position and not the employe was rated, and there was no transfer of rates from one position to another. The same truck driver position existed subsequent to 1929 as existed prior thereto. The fact that the size of the truck was increased did not create a new position. The duties of the position of truck driver were exactly the same after the acquisition of the larger truck as they were when the smaller truck was being operated. The then occupant of the position of truck driver did not have increased duties and responsibilities by virtue of driving a larger truck. His duties and responsibilities were exactly the same. A new position not having been created in 1929, Rule 5 did not come into operation and was in no way applicable at that time.

In 1941 a new position was created when the new International Truck was acquired. It was then necessary to have two truck driver positions at Roseville instead of one. At this time Rule 5, did come into operation and was properly applied when the carrier established the same rate for the said new position as was paid the driver of the other truck. No distinction could be made between two positions of truck driver at Roseville, and in applying to the new position of truck driver the established agreed-upon rate applicable to the position of truck driver at Roseville, as set forth and agreed to in the C-21 Final (plus such applicable general increases), the carrier was in every respect conforming with and applying Rule 5.

While it is true that the Roseville store was at the time the new position was created in 1941 in the same seniority district as the Sacramento store, there was no basis for applying the higher rate provided in the C-21 Final for certain truck drivers at the Sacramento store for the reason that, as previously pointed out, said higher rate was established on a basis recognized to exist only at San Francisco, Los Angeles, Portland, Oakland, and Sacramento, and said basis was in no way recognized to exist at Roseville.

The carrier submits that the foregoing conclusively establishes that at all times subsequent to 1927, the carrier has paid the occupants of the position of truck driver at Roseville the agreed-upon rate, and therefore the claim in this docket is without basis.

CONCLUSION

The carrier asserts that it has conclusively established that the claim in this docket is without merit, and therefore respectfully submits that it should be denied.

**OPINION OF BOARD:** When Form C-21 Final was promulgated in 1927 establishing rates of pay for positions coming within the scope of the Clerks' Agreement, a differential in pay was established between the positions of drivers of large and small trucks in Sacramento, San Francisco, Oakland, Portland and Los Angeles. Under that wage schedule the differential was 7

cents per hour at Sacramento. At Roseville, in the same seniority district, there was in operation at that time a one-half ton truck. The rate of pay for the position of driver was fixed at 55 cents per hour—the same rate as fixed for small truck driver positions at Sacramento. In 1929 a one and one-half ton truck was put on at Roseville in place of the half ton truck. The pay for the position of driver was continued at the same rate. In 1941 another one and one-half ton truck was put in operation at Roseville. The pay for the position of driver was fixed at the same rate as the position of driver of the other truck. Subsequently one of these 1½ ton trucks was replaced with a ¾ ton truck, the pay for the position of driver remaining the same as before. The claim is that these positions should be compensated at the same rate as fixed for drivers of large trucks at Sacramento.

Decision of the controversy rests upon the intention of the parties in fixing a different rate for the positions of drivers of large and small trucks in Sacramento, San Francisco, Oakland, Portland and Los Angeles. It is the contention of the claimants that the higher rate was intended for all positions of drivers of large trucks, regardless of where they were to be operated. The carrier contends that the intention was to apply the higher rate for large trucks only in the cities named. The arguments of the parties in support of their respective positions appear in the record and we shall not undertake to review or analyze them. It will suffice to say that we think the claimants have failed to establish their contention by a preponderance of the evidence. On the contrary, we think the weight of the evidence is against their position. For, a large truck was put in operation at Roseville in 1929; and the organization made no claim for the higher rate of pay until 1942. This acquiescence, in the rate paid, for so long a time, of course, does not work an estoppel against claimants. But it is most persuasive evidence in corroboration of the carrier's contention that, at the time Form C-21 Final was promulgated, the parties had no intention that the differential in rate of pay for positions of large and small truck drivers should be applied anywhere but in the cities mentioned.

**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 no violation of the agreement has been established.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 1st day of June, 1944.