

Award No. 2605

Docket No. CL-2599

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**Curtis G. Shake, Referee**

**PARTIES TO DISPUTE:**

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

**GREAT NORTHERN RAILWAY COMPANY**

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood that the following positions in the Superintendent's Office at Whitefish, Montana, be paid at the following rates as of October 6, 1942, (see Exhibit B), with titles and rates as listed:

|                          |                |
|--------------------------|----------------|
| Ass't Chief Clerk        | \$8.52 per day |
| Material Clerk           | 8.02 " "       |
| A. F. E. Clerk           | 7.52 " "       |
| Train Timekeeper         | 7.27 " "       |
| E & F Timekeeper         | 7.27 " "       |
| Road Clerk               | 7.02 " "       |
| B & B Clerk              | 6.87 " "       |
| Ass't Timekeeper & Clerk | 6.77 " "       |
| Comptometer Operator     | 6.47 " "       |
| Stenographers            | 6.47 " "       |
| RM & MC Clerk & Steno.   | 6.25 " "       |

**EMPLOYEES' STATEMENT OF FACTS:** Prior to October 1, 1931, a superintendent's office was located at Havre, Montana for the Operating Division known as the Montana Division. Among the various employees working on this Division there was employed in such Superintendent's Office at Havre the following positions with rates of pay as indicated:

|                          |                |
|--------------------------|----------------|
| Ass't Chief Clerk        | \$7.32 per day |
| Material Clerk           | 6.82 " "       |
| A. F. E. Clerk           | 6.32 " "       |
| Train Timekeeper         | 6.07 " "       |
| E & F Timekeeper         | 6.07 " "       |
| Road Clerk               | 5.82 " "       |
| B & B Clerk              | 5.67 " "       |
| Ass't Timekeeper & Clerk | 5.57 " "       |
| Comptometer Operator     | 5.27 " "       |
| Stenographers            | 5.27 " "       |
| RM & MC Clerk & Steno    | 5.05 " "       |

The work these employees were engaged in conformed with the titles of the positions as listed. On October 1, 1931, this Division office was abolished and the work formerly performed therein was consolidated with what is known as the Kalispell Division office located at Whitefish, Montana, and the Butte Division office located at Great Falls, Montana. The work in the Superintendent's Office at Havre, which was being performed by the clerks listed above, was divided between the Division Offices at Whitefish, Montana and at Great Falls, Montana for the territory taken over by the respective Divisions, and the work was assigned to positions with a similar title as those we have listed with rates as follows:

provisions for any such extension, their claim cannot be considered as anything other than a straight request for increases in rates of pay, which neither your Honorable Board nor the Carrier has the authority to grant under present wage freezing orders.

It is, therefore, the position of the Carrier that:

1. This claim is not within the jurisdiction of your Board, due to its not coming within the category of being "pending and unadjusted" on the date of approval of the Amended Railway Labor Act.
2. Even though this were not the case, the Employees have waived their right to present it, due to the unreasonable delay of over eleven years between the occurrence and the initiation of the claim.
3. It does not constitute a dispute "growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions," since there is no rule, interpretation or violation involved.
4. It constitutes a request for a straight increase in rates of pay, which is without the jurisdiction of your Board and which neither your Board nor the Carrier could grant, even were it justified, without approval of the National Railway Labor Panel, and
5. There is no justification for consideration of such increase in any event, based on rule or on merit, since the rates of pay now in existence are those properly arrived at by negotiation with the Employees, plus additions and subtractions due to Mediation, Arbitration and Awards originating with agencies and tribunals properly constituted under the law.

Therefore, the Carrier submits that the claim of the Employees should be denied by your Honorable Board and requests an award so holding.

**OPINION OF BOARD:** This dispute involves the question of the proper rates of pay of eleven positions in the office of the Superintendent of the Kalispell Division at Whitefish, Montana which petitioner says were transferred there with a resulting reduction in pay when the Montana Division at Havre was abolished on October 1, 1931. Petitioner contends that the employees occupying said positions are entitled to the rates of pay prevailing at Havre when that office was discontinued, plus all general increases, retroactive to the filing of the claim on October 6, 1942. Reliance is placed on Rule 62 of the effective Agreement of October 1, 1925, which reads:

"Established positions shall not be discontinued and new ones created under a different title covering relatively the same class of work for the purpose of reducing the rate of pay or evading the application of these rules."

We find nothing in the record to indicate that the carrier violated the letter or the spirit of Rule 62. It is conceded that the consolidation of the divisions was justified in the interest of economy and efficiency. There are no facts before us tending to establish that the carrier was motivated by bad faith, or that the consolidation was "for the purpose of reducing the rate of pay or evading the application of (the) rules." The rates of pay applicable to similar positions varied in the several divisions prior to the consolidation. These were the result of direct negotiation between the organization and the carrier. It is not the function of this Board to undertake to condemn, defend or harmonize these rates. On the contrary, we will assume that the rates established by the parties for services performed at Whitefish are reasonable and just, even though these are less than those formerly prevailing at Havre.

This case is typical of those in which this Board is amply justified in leaving the parties where it finds them. The claim was not filed for eleven years after its accrual. Claimants undertake to excuse this long delay by showing that they made timely verbal demands for redress, but this is a circumstance against them, rather than for them, because it discloses that they were fully cognizant of whatever rights they had and their subsequent inaction was calculated to lull the carrier into the belief that the matter was at rest. The precedents sustaining this view are too numerous and well-known to require citation.

**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 did not violate the Agreement.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: H. A. Johnson  
Secretary

Dated at Chicago, Illinois, this 19th day of June, 1944.