

Award No. 2683

Docket No. CL-2654

**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**

SOUTHERN PACIFIC COMPANY (PACIFIC LINES)

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

(a) The correct rate of pay for Positions 417, 418, 419 and 420, Ticket Clerks, San Francisco Third Street Station, is \$7.11 per day.

(b) The incumbents of these positions, E. L. Azore, F. B. Atkinson, W. G. Savelle and E. L. Jourdan and/or their successors, be compensated for all monetary loss sustained by application of incorrect rate, retroactive to January 15, 1943, the date claimants were assigned to the positions involved.

EMPLOYES' STATEMENT OF FACTS: An Agreement bearing effective date of October 1, 1940, as to rules and working conditions, is in effect between the parties to this dispute. The employees involved in this claim are covered by that Agreement.

On Bulletin No. 38, January 6, 1943, there was advertised for seniority choice, for service at San Francisco, Third Street Passenger Station, four positions, i. e. 417, 418, 419 and 420, local Ticket Clerks, rate \$6.52 per day; on Bulletin No. 1, January 15 the positions were assigned to employees E. L. Azore, F. B. Atkinson, W. G. Savelle and E. L. Jourdan.

POSITION OF EMPLOYES: Rules 5 and 7 of our current Agreement with the Carrier, read:

"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."

"Rule 7.

Employees temporarily or permanently assigned to higher rated positions shall receive the higher rates while occupying such positions; employees temporarily assigned to lower rated positions shall not have their rates reduced.

A 'temporary assignment' contemplates the fulfillment of the duties and responsibilities of the position during the time occupied, whether the regular occupant of the position is absent or whether the temporary assignee does the work irrespective of the presence of the regular

When positions Nos. 417, 418, 419 and 420 were established on December 18, 1942, said positions (and not the employes) were rated, and rates were not transferred from one position to another. Therefore, Rule 4 was in no way violated.

As set forth above, Rule 5 was strictly complied with when the carrier established the rate of \$6.52 per day for positions Nos. 417, 418, 419 and 420; said rate of \$6.52 per day was in conformity with the rates for positions of similar kind and class in the same seniority district, namely, ticket clerk positions at the Ferry Ticket Office.

The petitioner apparently fails to take into consideration the fact that the Ferry Ticket Office is in the same seniority district as the Third Street Station; furthermore, the petitioner in contending that positions Nos. 417, 418, 419 and 420 should have been established at the rate of \$7.11 per day (one of the agreed-upon rates for ticket clerks at the Third Street Station) fails entirely to consider the fact that positions Nos. 417, 418, 419 and 420 were not similar or comparable to said ticket clerk positions that paid the \$7.11 rate.

A mere reading of Rules 6 and 7 discloses that they are in no way applicable and in no way support the petitioner's position in the instant case.

The carrier submits that the foregoing proves that the carrier's action in establishing the rate for Positions Nos. 417, 418, 419 and 420 at \$6.52 per day was proper and strictly in accordance with the current agreement.

CONCLUSION

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

OPINION OF BOARD: Claimants were assigned positions as Ticket Clerks at the Third Street Passenger Station in San Francisco at a daily rate of \$6.52. Claimants contend the daily rate should be \$7.11, and ask the Board to so decide and award monetary loss.

Base rates of pay were fixed in 1927 by an arbitration award. Classification of positions and rates of pay were thereafter set up and designated on Form C-21 Final. The daily rates of pay of ticket clerks at the Third Street Passenger Station as fixed therein, plus wage increases since granted, were \$7.11, \$7.31 and \$7.50. It is the contention of claimants that they are entitled to receive a daily rate of \$7.11, the lowest amount paid ticket clerks at this point.

Carrier contends that the positions were newly created and that they are of the same kind and class as certain ticket clerk positions at the San Francisco Ferry Ticket Office in the same seniority district which received a daily rate of \$6.52, until such positions were discontinued in 1938. We do not think Rule 5 of the current agreement is subject to the interpretation the carrier attempts to put upon it. The purpose of Rule 5 was to require as near as possible the same rates of pay for similar positions, newly created, where they had not been classified and rated by agreement. The rule contemplates that the wages of a new position shall be in conformity with the wages being paid employes in positions presently filled. It certainly was not the intent of the rule to conform the wages of a newly created position with those of a position no longer in existence.

Ticket Clerks at the Third Street Station are paid three different rates, the lowest of which is a daily rate of \$7.11. This rate is also the lowest in the seniority district. It seems to us, under these circumstances, that the carrier is required under the agreement to pay these claimants the minimum daily rate of \$7.11.

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 violated the current agreement in fixing a daily rate below the minimum provided in Form C-21 Final.

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 30th day of October, 1944.