

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Jay S. Parker, Referee

PARTIES TO DISPUTE:

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

**SOUTHERN PACIFIC LINES IN TEXAS AND LOUISIANA
(TEXAS AND NEW ORLEANS RAILROAD COMPANY)**

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

(1) Carrier wrongfully, summarily, and arbitrarily refused to bulletin, fill, and pay three (3) new telephone-information clerk jobs in the City Ticket Office, Houston, in accordance with rules agreement and wage agreement, both effective November 1, 1939.

(2) Rate of positions, when created, should have been \$170.60 per month, and that any and all occupants of the jobs be paid the difference between \$135.00 per month, as paid, and \$170.60 per month, the schedule rate.

(3) All other employees, affected by reason of carrier's arbitrary refusal to bulletin, fill, and pay the jobs in accordance with rules and wage agreements of November 1, 1939, be reimbursed for all monetary losses suffered.

EMPLOYEES' STATEMENT OF FACTS: This dispute concerns employees and rates of pay of positions in the District Passenger and City Ticket Office—Houston, a seniority district within itself.

With the huge increase in passenger business, the number of telephone calls from patrons, seeking information with respect to passenger service, increased correspondingly. The number of telephone calls from patrons increased so greatly that the "Telephone-Information Clerk" (May 28, 1942) and the "Information-Reservation Clerk" (June 11, 1943), the two employees then assigned to the performance of that particular class of service, were no longer able to handle such calls either satisfactorily or in a manner reflecting credit on the Carrier. This condition and sound judgment made it necessary that the Carrier augment this inadequate service by the creation of additional positions in the Information Bureau to provide patrons with more, to the point of adequacy, of the same kind of service.

To meet the conditions described above, additional information service was provided by the creation of four (4) additional jobs, as of June 28, 1943, to receive telephone calls and transmit information to patrons with respect to passenger service furnished by the Carrier. One of the new jobs was correctly defined as being "Telephone-Information Clerk," and was properly bulletined to pay \$170.60 per month, the agreed schedule rate of pay. The other three jobs were invested with a new character by baptism as "Assistant

OPINION OF BOARD: Prior to June 28, 1943, there existed in the District Passenger and City Ticket Office, Houston, Texas—a separate and distinct seniority district—two positions classified and rated, one as Telephone-Information Clerk, \$170.60 per month, the other as Information-Reservation Clerk, \$170.60. These were the only positions of that or similar kind or class in this seniority district. On June 28, 1943, the Carrier created by bulletin an additional position of Telephone-Information Clerk, rate \$170.60 per month, also three Assistant Telephone-Information Clerks, rate \$135.00 per month each, one to be located in the City Ticket Office at 913 Texas Avenue, all of such positions within the same seniority district as the two in existence prior to June 28, 1943.

Hence, after June 28, 1943, there existed in this seniority district, two positions of Telephone-Information Clerk, rated \$170.60 per month each, one position of Information-Reservation Clerk, \$170.60 per month, and three positions designated as Assistant Telephone-Information Clerk, rate \$135.00 per month each. The rate of pay for these three latter positions is in dispute, the petitioner contending that they are of similar kind or class to the two positions in existence prior to June 28, 1943. Petitioner contends that under Rules 46 and 48 the three positions classified and rated as Assistant Telephone-Information Clerk, \$135.00 per month each, should have been classified, bulletined, rated and assigned as Telephone-Information Clerks, rate \$170.60 per month. Carrier states that the rate of \$135.00 was taken from a position at the Depot Ticket Office in Houston, the same city but another seniority district, an established position of Information Clerk at a daily rate of \$5.30, or the equivalent of \$135.00 per month. Carrier contends, in effect, that the three positions in question are in fact Assistant Telephone-Information Clerks, that as there was no such position of similar kind or class in this seniority district, it was within its rights in adopting the rate of the position of Information Clerk in another seniority district in the same city. Carrier seems to advance as its main argument that as the three new positions in question do not carry the same or similar work and responsibilities of the three higher rated positions and that as the higher rated positions are required to supervise, to some extent, the lower rated positions, the latter are not of similar kind or class to the higher rated positions and should not be rated at \$170.60.

At the outset of its argument the Carrier questions the jurisdiction of the Board and its power to determine the dispute because it was not handled on the property and did not originate with the individual employes involved. The contention is not new to this Division and is entirely devoid of merit. It was decided in Award 2724 in disposing of a like claim advanced by the same Carrier. In the Opinion in that case we said:

"As to its first contention that the claim did not originate with the individuals, that was overruled in Award No. 137 of this Board. We adhere to that ruling. As to the second contention, the claim here is that of the Brotherhood, one of the parties to the agreement, against the carrier, the other party to the agreement, for having violated the rules of the agreement. The claims for penalty on behalf of Taylor and Leonard are merely incidental thereto. See Awards Nos. 1646 and 2282."

See also Award No. 137 holding that where, as here, a dispute of such character has been the subject of correspondence and conferences between the parties, neither Sections 2 or 3 (i) of the Railway Labor Act, or the rules of this Division as set forth in Circular No. 1 precludes procedure here followed in the handling of claims. We reaffirm the principles announced in the Awards to which we have just referred and hold that we have jurisdiction over both parties and the subject matter.

The parties are in accord that Rule 48 is a part of the contract and in full force and effect. It reads:

"NEW POSITIONS. The wages of new positions shall be in conformity with the wages for positions of similar kind or class in the seniority district where created."

Nor does dispute exist between them as to the construction to be placed upon its language as just quoted. The sum and substance of the Carrier's contention is that there were no positions of similar kind and class in the same seniority district when the positions characterized by it as "Assistant Telephone-Information Clerks" were bulletined and assigned, while the Petitioner contends the then existing position of "Telephone-Information Clerk" and "Information-Reservation Clerk" in the City Ticket Office, Houston, were of similar kind and class. Therefore, we have essentially a factual question for determination to be based upon all the facts and circumstances appearing in the record.

It should perhaps be here stated that if the Petitioner's position cannot be sustained from the source the rule has not been violated, for whatever the rate established by the Carrier may be if the position is not of similar kind and class it is not within the province of our duties to fix the rate of pay. All we can do is interpret the Agreement and apply its terms. This, of course, includes the right to direct the payment of such rate as is fixed by those terms. See Award 2682.

The facts upon which we are required to base our opinion could be detailed at some length but we believe a summarization of them will serve our purpose. As we read the record the persons occupying the positions of Telephone-Information Clerk and Assistant Telephone-Information Clerk, in the performance of their duties, gave similar service with respect to receiving telephone calls and transmitting information to patrons regarding passenger service furnished by the Carrier in the following particulars: (a) Information regarding arrival and departure of trains; (b) information pertaining to transfers and stopovers; (c) any and all other kinds of information with respect to passenger service such as train equipment, dining car facilities, baggage, red caps, wheel chairs and other conveniences provided for use of patrons; (d) quotations generally of local and interstate railroad and Pullman rates, and (e) quoted from Official Guides, Joint Tariffs and Memo Tariffs in the quoting of rates and giving of other information. Aside from the designation of title in their inception, which we do not deem of any consequences about all the Carrier contends placed the positions outside the scope of the rule were (1) the incumbents had no prior experience, (2) they did not entirely fulfill all the obligations expected of more experienced operators, and (3) they did not figure intricate rates but did quote from those already figured which, in passing, we conclude and we believe rightfully so, were by far in the majority. Moreover, as to such rates, when they did not have available information regarding them they were permitted to procure them from accessible rate clerks who make the figuring of rates their special business.

With the factual situation summarized, we turn to our decisions to ascertain their trend under similar, if not identical, circumstances and conditions. In Award 1861 we held:

"Rule 51 (a) under which this dispute is brought to the Board reads:

'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.'

"Under this rule it is necessary for a new position to receive the rate of an existing position to show that (a) it is in the same seniority district and (b) is of a similar kind or class. It does not have to have equal responsibilities in the sense that duties and services are identical, nor does it necessarily require supervision of work of equal importance in the sense just mentioned. It may still be of equal importance and responsibility."

In Award 2678 we said:

"While it is true that the gross income of the San Rafael station was much less than the others, the kind and class of work appears to be much the same. While gross income is an element to be considered, yet it is not a controlling factor. Large returns often result from few transactions while a smaller income sometimes is the result of a multitude of small ones. It is altogether possible the work of the smaller would require more training and experience than the larger. We cannot say, therefore, from a comparison of station returns alone that cashiers' positions in each are or are not of the same kind or class."

And in Docket CL-2807, Award No. 2808, this day decided, we reaffirmed the principles announced in the awards to which we have just referred, and held that a position identified as Night Yard Bill and Ticket Clerk was similar in kind and class to another classified simply Ticket Clerk.

Much more could be said on the subject but to do so would only unduly prolong this opinion. Faced with a factual situation such as we have just related, guided by decisions of the character referred to, and, in the light of the plain and unequivocal language of Rule 48, we feel our decision must be that the positions of Assistant Telephone-Information Clerk, when bulletined and assigned by the Carrier under that title were positions similar in kind, as well as class, to the position of Telephone-Information Clerk then in existence in the same seniority district. In announcing our conclusion we feel impelled to say we have no quarrel with the rule laid down in the many awards cited by the Carrier and holding that the burden of proof is upon the Petitioner to sustain its position. We simply say that after a detailed examination of the entire record we are convinced that burden was met by a preponderance of the evidence.

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 Assistant Telephone-Information Clerks' positions at Houston are new positions of the same kind and class as the position of Telephone-Information Clerk in the same city and seniority district and the provisions of Rule 48 of the current agreement makes provision for the rate of pay for such positions.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary

Dated at Chicago, Illinois, this 21st day of February, 1945.