Award No. 2810
Docket No. CL-2776

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 violated Rule 47 of the Agreement by paying G. W. Bray and A. P. Flores, employes in Houston General Stores, at Counterman's rate while regularly assigned to and engaged in the performance of the actual duties of Caboose Supplymen from November 1, 1939 to date.

(2) G. W. Bray and A. P. Flores be paid the difference between what they were paid at Counterman's rate and what they should have been paid at the Caboose Supplyman's rate for supplying cabooses in the period November 1, 1939 to date.

EMPLOYES' STATEMENT OF FACTS: This dispute concerns employes and rates of pay of positions in the Houston General Stores, Houston, Texas.

In all of the period involved here, that is, from November 1, 1939 to date, forces have been provided around the clock for supplying cabooses in Houston. This claim was first presented August 21, 1942. As of that date, S. D. Terry checked and supplied all cabooses from 7:00 A. M. to 3:00 P. M.; A. P. Flores checked and supplied all cabooses between 3:00 P. M. and 11:00 P. M.; and G. W. Bray checked and supplied all cabooses between 11:00 P. M. and 7:00 A. M. S. D. Terry, first trick man, was classified and paid as being Caboose Supplyman, his then rate being 63¢ per hour. Bray and Flores, third and second trick men, respectively, were classified and paid as being Countermen, the Counterman rate then being 54½¢ per hour. Each of the three men were regularly assigned to, and engaged in, the performance of the commonly recognized duties of a Caboose Supplyman. These conditions have remained unchanged to date, except as to the employes assigned and rates of pay which were increased from 63¢ to 72¢ and from 54½¢ to 63½¢, respectively, in last wage award.

The Carrier and the Organization negotiated a signed wage agreement, which became effective November 1, 1939. Pages 1, 46, 47, 85 and 86 are attached hereto as exhibits Nos. 1, 2, 3, 4 and 5, respectively. As shown on Page 47 (Exhibit 3) the agreed rate for Caboose Supplyman, as of that date, was 53¢ per hour, and the agreed rate for Counterman 44½¢.

Under date of August 21, 1942, claim was made for and in behalf of G. W. Bray and A. P. Flores for payment at rate of 63¢ per hour, the agreed rate for Caboose Supplymen, effective as of the first of the month in which

of its jurisdiction, as established in the Railway Labor Act, as well as the provisions and the meaning, intent, and spirit of that act, and in effect, arbitrarily abrogate an agreement all of us are legally and morally bound to observe and respect.

CONCLUSION

The Carrier has shown that the purported claim has not been handled in the usual manner and within the prescribed time limit; that the case involves a request for change of agreement, over which the Board is not given jurisdiction; that if there was a basis for such a claim, claimants have slept on their rights, are barred by laches and stale demands, and are estopped at this late date from claiming a different title and rate than they agreed upon in 1939; that such a claim was foreclosed by agreement, and all such questions disposed of, as confirmed by letter of October 4, 1939; that if a change in that agreement is warranted by the circumstances, the proper procedure is for the Organization to request and endeavor to negotiate a change, in the manner prescribed by agreement and the Railway Labor Act; that the position of the Organization in any and all events, is untenable and without basis in rule and practice.

OPINION OF BOARD: At the outset the Carrier's contention this claim was not properly handled on the property in direct negotiations and its challenge to the jurisdiction and right of this Board to resolve this dispute is rejected. The questions raised in connection therewith have been disposed of in Awards 137 and 2724, also Docket 2774, Award 2809, and no sound reason is advanced as to why those decisions should be repudiated or the principles announced therein set aside. The dispute is properly here and will be disposed of on its merits.

The claim of the Brotherhood is that work performed or positions occupied by employes G. W. Bray and A. P. Flores in the Houston General Stores are those of Caboose Supplymen, for which there is an agreed upon rate of 53 cents per hour (this rate later, by agreements of the parties, increased to 72 cents). They are now classified and rated as Countermen, 44½ cents per hour (present rate 63½ cents). These employes occupy what are known as the second and third tricks, hours 3:00 P. M. to 11:00 P. M., and 11:00 P. M. to 7:00 A. M., respectively. The first trick is classified and rated as Caboose Supplyman, rate 72 cents per hour. The three positions furnish 24-hour, or around the clock, service in checking and supplying cabooses. They are located in what is known as the Caboose Supply House, a small structure separate and apart from the main store buildings.

The Petitioner asks this Board to classify the two Countermen as Caboose Supplymen, alleging that the Carrier in refusing to do so has violated the rules of the current Agreement, effective November 1, 1939. It is conceded by all parties the work performed by both Caboose Supplymen and Countermen is covered by the terms of such Contract. In our opinion rules appearing therein which are vital to a determination of the issue raised by the parties are Rule 45, which reads:

> "Rates of pay now in effect for all classes of employes coming within the provisions of this agreement are continued in effect under this agreement."

and Rule 46, which provides:

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

Important also for our purposes is the Wage Agreement negotiated between the parties and effective November 1, 1939. By reference to it we believe it can be fairly concluded that among other positions in the Houston General Stores, it covered one Caboose Supplyman, rate 53 cents per hour and two Countermen, rate 44½ cents per hour.

Aside from what has been related, other outstanding and undisputed facts are that the three positions to which reference has been made have been in existence for more than 15 years during all of which time there has been no material or substantial change in the duties thereof.

Irrespective of the many arguments advanced by the parties in support of their respective positions we believe the one decisive question involved in this controversy is whether the three positions in the Houston General Stores have been and are now properly classified and rated by the Carrier.

As we approach the solution of the problem it is necessary to go back 15 years to the time when the positions of Caboose Supplymen and Countermen were first created and classified at Houston by the Carrier. Then, and now, the duties required of a Caboose Supplyman were to maintain records and keep in stock in the Caboose Supply House materials and supplies that were to be issued and supplied cabooses during his tour of duty as well as the tour of duty of the other two employes and in addition to supply cabooses. Then, as now, the duties of the positions occupied by the two employes just mentioned were to furnish and supply cabooses with the supplies made available in the Caboose Supply House for that purpose. True enough, the Caboose Supplyman performed all the duties of the Countermen but, in addition he performed and has continued to do so in his position, other work of greater magnitude and involving far more responsibility. If proof of the diversity in character of the two positions as classified be needed it can be found in the fact, which is not denied, that Flores, one of these very claimants, was at one time assigned to the position of Caboose Supplyman and asked to be relieved of the job because of its added responsibilities. That fact in itself is, in our judgment, especially significant in a determination of the factual situation. The criterion for determining whether positions are so similar in kind and class as to require a like rating is not to be found in the title by which the position is classified but in the relativity of their responsibilities and duties. It may well be that the positions when created could have been more happily described but that in itself would not result in a situation where it could successfully be maintained they were of like character. So with respect to the three positions in the Caboose Supply Depot, we hold they were not improperly classified at the time of their creation. We hold likewise with respect to their present status. The Wage Agreement to which we have referred providing for continuation of rates of pay then in effect, while in itself not decisive of the question, indicates that at the time it and the current Agreement were entered into the parties recognized a distinction in the positions of Caboose Supplyman and Counterman. Of course, neither the existence of the Wage Agreement nor Rule 45 of the Contract would bind the Petitioner if in fact it could be shown the Countermen had assumed and were performing the greater responsibilities and duties of the Caboose Supplyman. But that, as we have heretofore indicated, we do not believe they are doing.

Without further discussion we hold, under the facts and circumstances disclosed by the record, the position of Caboose Supplyman is separate and distinct in character from that of Counterman in the Caboose Supply Depot at Houston, and that in classifying and rating the positions in that manner there has been no violation of the current Agreement.

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 record discloses no grounds upon which to base an affirmative award.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

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