

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

H. Nathan Swaim, Referee.

PARTIES TO DISPUTE:

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

ATLANTIC COAST LINE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees:

1—That the carrier violated rule 67 of the agreement effective February 16, 1944, at Waycross, Georgia Agency when it established, on or about November 16, 1946, the positions of tractor drivers and helpers at rates of pay of 75½ cents per hour for helpers and 77½ cents per hour for tractor drivers. These rates were arbitrarily established and were the rates of pay for truckers and stowers.

2—That all tractor drivers at Waycross, Georgia Agency be paid a rate of 90½ cents per hour effective with the date of establishment of these positions and that all helpers be paid a rate of 78½ cents per hour effective with the date of the establishment of these positions.

EMPLOYES' STATEMENT OF FACTS: Prior to about November 18, 1946, the handling of freight at Waycross, Georgia Agency was performed by employes with hand trucks. The truckers moved this freight from car to car while the callers placed the freight on the trucks and the stowers stowed the freight in cars. Truckers rate of pay was 75½ cents per hour and callers and stowers rate of pay was 77½ cents per hour.

On or about November 18, 1946 a number of tractors were put into use at Waycross Agency and a driver assigned to each tractor and a helper assigned to couple and uncouple floats and in other ways assist in the movement of freight on the transfer with one helper accompanying each tractor and one tractor driver assigned to each tractor.

Rule 1 of the Clerks' Agreement effective February 16, 1944 reads in part as follows:

"SCOPE"

"Group (3) Laborers employed in and around stations, storehouses and warehouses, such as truckers, stowers, callers, scalers, sealers, tractor drivers, janitors and all other warehouse and freight station laborers; baggage, mail and parcel room porters, red cap porters, maids, cleaners and janitors at passenger stations; counter-men, stockkeepers, stockmen, stationers and counter checkmen not

of materials, and he is qualified, should an emergency arise by reason of sudden illness or injury of the driver, to act in his stead in the emergency, even though he might not be required to do so. He does not simply ride around in the cab of the truck all day long, enjoying the ride and never performing any manual labor. Can this be said of the "helper" on a "Banty" tractor, whose only duty is to at intervals press a lever with his foot and thereby release a trailer? Could that, by the farthest stretch of the imagination, be termed as manual labor? Carrier believes otherwise, and feels that it could more properly be termed "The life of Riley", since this so-called "helper" has, without doubt, the easiest and most effortless job on the entire transfer, if not on the entire system. Would it then be proper to reward him for his inactivity by compensating him more liberally than the truckers on the transfer, who are throughout the entire day bending and straightening, lifting and shoving, pulling and pushing? It is not at all difficult to understand why the other truckers clamor for permission to fill a "helper's" vacancy. Who, in his right mind, would not prefer to "help" do nothing, rather than to labor throughout the day in the loading, unloading and handling of merchandise, but receive the same compensation therefor? Since this Carrier has no other positions where employees do virtually nothing, it was, therefore, impossible to find a **similar position** and award to the new position of "helper" a rate in conformity therewith, and inasmuch as 75½¢ per hour was our minimum labor rate, that was the rate which Carrier deemed applicable to the so-called "helpers", as there was not a lesser rate which could be awarded them, though they do less than the lowest paid laborer and, by all rights, should receive less than those laborers, if the basis for compensation was the amount of actual work performed.

(Exhibits not reproduced.)

OPINION OF BOARD: This case presents the question of the correct rate of pay for the positions of tractor drivers and helpers which positions were established November 16, 1946, at the Waycross, Georgia Transfer Agency of the Carrier. Prior to establishing these new positions freight at this place had been handled by employees using hand trucks.

Rule 67 of the applicable agreement provided that,

"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. When no similar positions exist on the seniority district where created, the wages for new positions shall be in conformity with the wages for similar positions on the nearest seniority district."

The parties admit that there were no "similar positions" in the same Seniority District as the Waycross Transfer so it became necessary to find similar positions in the nearest seniority district and use the rates there established.

The Brotherhood insists that there were similar positions at the Waycross, Georgia, Stores Division, only a half mile distant, but in a different seniority district, where the rates paid for tractor drivers was 90½ cents an hour and for helpers 78½ cents per hour.

The Carrier, however, contends that the positions at the Waycross Stores Division were not similar to those at the Waycross Transfer and that at Pinner's Point, Va., it found positions that were identical to those at Waycross Transfer.

The Carrier's statement on this in its original submission is revealing. It says that "The only other point on Carrier's property where identical equipment was in use, and there were positions identical to those created at Waycross merchandise transfer, was on Carrier's merchandise piers at Pinner's Point, Virginia." It bases its contention that the positions were identical on the ground that the tractors used at the two points were for all practical purposes the same.

The rule does not call for identical positions but only for similar positions. It is difficult to imagine that there were not similar positions in a seniority district nearer than Pinner's Point. However, the Brotherhood in presenting this case failed to point out any positions as being similar except those at Waycross Stores. The Brotherhood failed to prove that the positions at Waycross Stores were similar. At the Waycross Transfer the equipment driven most of the time consists of small Banta Tractors which are used to pull strings of small four wheeled trailers on the concrete platform of the Waycross Transfer for the purpose of transferring freight from one car to another. The tractors never leave this platform. They are loaded and unloaded by other employees. The Tractor is so simple that it can be driven by anyone who can drive an automobile. The freight on each trailer is marked with a numeral to designate the car by the side of which the trailer is to be uncoupled and left for unloading.

Occasionally these tractor drivers are also required to operate a Mercury Tilting Ford Truck which is used for lifting heavy, up to 2000 pounds, of freight up to a height of eight feet.

In addition to equipment similar to the above, the tractor drivers at the Waycross Stores are required to be familiar with and be able to operate several types of more complicated equipment, to drive Trucks on the public highways and to be familiar with the location of the storage locations of the various types of material and supplies in the large area covered by the Stores Department and the adjacent yard.

In view of these facts we are of the opinion that the positions at these two points could not be considered as being similar within the meaning of Rule 67.

However, accepting the contention of the Carrier that the positions of drivers at Pinner's Point are similar to the positions in question at Waycross Transfer, the Carrier still failed to establish the rate for the drivers at Waycross according to the provisions of Rule 67. The Rule requires that the rate for the new positions to be established shall be "in conformity with" the similar positions in the nearest seniority district.

In its submission the Carrier states that at Pinner's Point it was paying tractor drivers the same rate as stowers and callers and therefore fixed the driver's rate at Waycross Transfer at 77½ cents per hour which was the rate then being paid stowers and callers at Waycross Transfer. The rule states that the wages shall conform, not the method of fixing the wages. Later in its submission the Carrier states that the wages of the stowers and callers, and therefore the wages of the tractor drivers, at Pinner's Point was 82½¢ per hour. Therefore, accepting all that Carrier has said on the question of the rate for tractor drivers, the Carrier was required by Rule 67 to establish the rate of 82½¢ per hour for the new positions of tractor drivers at Waycross Transfer.

On the question of the correct rate for helpers the Carrier admits there were none at Pinner's Point and contends that "there were no such positions on Carrier's entire property." It, therefore, fixed a rate of 75½ cents per hour for the helpers at Waycross Transfer. There was no pretense here of following Rule 67.

If the facts were as stated by Carrier, it could have negotiated with the Brotherhood and probably have avoided future difficulties.

The Brotherhood, however, again insists that the helper positions at Waycross Stores are similar to those at Waycross Transfer and that they should be paid the same. The Carrier describes the duties of this position as being "to help do nothing" and insists that the helper at Waycross Stores occasionally is required to help load and unload trucks. It stands to reason that in each case the helper is required to spend his time with the tractor each day and would be required to help in various ways. If there were actually nothing for him to do the Carrier would promptly abolish the position. We think the helper positions at these two points were similar.

Since the helper position at Waycross Stores is in the nearest seniority district and since we have been cited to no other helper position we must hold that the wages paid on that position, 78½ cents per hour, should have been established under Rule 67 as the rate for the new helper positions at Waycross Transfer.

The Carrier cites the fact that during the pendency of this claim there has been the national wage increase of 15½ cents per hour which, of course, was applied to these new positions at Waycross Transfer. That fact is important only as showing that such increase should have been and must now be applied, as of its date, to the rates which should have been fixed for these positions when they were established.

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 Carrier violated the Agreement as claimed.

AWARD

Claim (1) sustained. Claim (2) sustained as indicated in opinion, rate of 82½ cents per hour for tractor drivers and 78½ cents per hour for helpers, effective the date said positions were established and increased per national wage increase on the date of such increase.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 30th day of April, 1948.