

Award No. 3935
Docket No. CL-3944

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

James M. Douglas, Referee

PARTIES TO DISPUTE:

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

**FLORIDA EAST COAST RAILWAY COMPANY (SCOTT M.
LOFTIN AND JOHN W. MARTIN, TRUSTEES)**

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

- (a) The carrier violated the Clerks' Agreement by failing and refusing to rate positions Nos. 5 and 3000 at \$4.8815 per day when created at Hollywood Agency in accordance with provisions of Rule 56, and
- (b) that all employees involved in or affected by the agreement violation be compensated for all losses sustained between the time positions were established under the current agreement, December 13, 1940 and the time that the positions are rated in accordance with the provisions of the agreement rules.

EMPLOYEES' STATEMENT OF FACTS: On December 13, 1940, carrier issued Bulletin No. 1 advertising Position No. 2653 (later designated as position No. 3000), rate of pay \$4.3913 per day, with the following described duties:

"The duties of this position consist of checking, receiving, delivering, forwarding and keeping record of baggage; handling baggage accounts, supervising the handling of United States mail, general freight agency clerical work, and such other duties as may be assigned by agent."

On the same date, carrier issued Bulletin No. 2, advertising Position No. 2564 (later designated as position No. 5) rate of pay \$4.3913 per day, with the same duties as described above for position No. 2653.

The advertised duties on baggage clerk positions in the same seniority district, and at the points indicated, read as shown below:

West Palm Beach

(Advertised December 12, 1940, rate of pay \$4.8815 per day, probable duration four months.)

"The duties of this position consist of checking, receiving, delivering, forwarding and keeping record of baggage, handling baggage accounts, looking up records in connection with baggage claims, supervising the handling of mail and other duties assigned by Agent."

vacancies were being advertised in the positions and not when the positions were being re-established. These positions were re-established in December, 1940 and were cut off and re-established several times between December, 1940 and April, 1945. Each time they were re-established or became vacant they were bulletined to all employees in the seniority district and copies of the bulletin sent to the representatives of the Employees.

The claim is entirely without merit and should be denied.

(Exhibits not reproduced)

OPINION OF BOARD: By this claim Petitioner seeks to have the rates of two clerical positions at Hollywood, Florida, increased. It contends that when these positions were established on December 13, 1940, they were new positions and came within the provisions of Rule 56.

Rule 56 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."

In resisting the claim Carrier raises two defenses. First, it alleges that these positions are not new positions but are old positions, seasonally re-established. Second, it asserts that the present rates of the positions in question conform with the rates of positions of similar kind or class in the same seniority district.

The station at Hollywood was a creation of the Florida boom of 1924-1926 and the positions in question were then first established. When in the natural order of events the bust followed, the positions were "cut off" on May 15, 1926. The bust was followed by a tropical hurricane that apparently blew Hollywood almost off the map because only after fourteen years do we find the positions again in being. Although Carrier claims they were "cut off" in 1926, it is our view they were then abolished, and we cannot agree their establishment after 14 years made them "seasonal" positions at that time. It appears that thereafter they may have become seasonal positions but that is of no consequence in this claim.

We discussed the issue of seasonal positions in a claim involving that same issue but different facts in Award No. 3928, and adopt here what was said there about that issue. However, that Award is distinguishable on the facts. There, as a result of the war, the new positions established had different duties than the previous position had. Carrier later recognized this and placed the new positions on the same parity with similar positions in the same seniority district. Here we find no change in duties.

The determining question in this case, therefore, is whether the rates of the positions conform to others of similar kind or class.

Petitioner says they should carry the same rates as the baggage clerk positions at Fort Pierce, West Palm Beach, and Miami. The record shows they now have the same rates as clerical positions at Lake Worth, Delray Beach, Boca Raton, Pompano, Fort Lauderdale, and Dania which, together with Hollywood, comprise the intermediate stations between the noted tourist resorts of West Palm Beach and Miami. These intermediate stations are all comparable in that they are small agency combination baggage and freight agency positions, and except for Fort Lauderdale are of comparable population. The fact the positions in question are baggage clerk positions while those at the above stations are merely clerical positions does not keep them from being of "similar kind or class." The positions do not have to be identical to come under Rule 56.

Petitioner has the burden of proving the positions in question are of similar kind or class with other positions in the same seniority district which carry the higher rate sought for. It has not sustained that burden in this claim.

Accordingly, the claim should be denied.

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 Carrier has not violated the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 11th day of June, 1948.