

Award No. 4080

Docket No. CL-4054

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**

THE MINNESOTA TRANSFER RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that the Carrier violated the Clerks' Agreement

(1) When on March 26, 1945, it created a position they designated as Assistant Marking Clerk at the improper rate of \$7.03 per day and arbitrarily assigned the position to employee, George Fick, and

(2) That Carrier further violated the Agreement when on January 17, 1946, it arbitrarily reduced the then correct rate of the position, \$9.07 per day, to \$8.82 per day, the correct rate having been applied effective December 3, 1945, and

(3) That George Fick who occupied the position from March 26 to December 2, 1945, be paid the difference between the improper rate of \$7.03 per day, arbitrarily established by the Carrier, and the rate that properly should have been applied, \$7.79 per day of difference of \$.76 per day for each day of that period, and

(4) That George Fick and each employee who occupied the position after January 17, 1946, when Carrier arbitrarily reduced the proper rate of \$9.07 per day to \$8.82 per day be paid the difference amounting to \$.25 per day, until 8:00 A. M., August 11, 1947, at which time the position was abolished.

EMPLOYEES' STATEMENT OF FACTS: Prior to March 26, 1945, the Checkers employed at Charles Street Station, St. Paul, Minnesota, were paid \$7.03 per day and the Marking Clerk at this Station was paid \$7.79 per day.

Prior to March 26, 1945, the Checkers at Hennepin Avenue Station, Minneapolis, Minnesota, were paid \$7.03 per day and the Marking Clerk at that Station was paid \$7.54 per day.

Charles Street Station, St. Paul, and Hennepin Avenue Station, Minneapolis, are embraced in the same seniority district, but the two stations are several miles apart and as indicated above a differential of \$.25 per day was paid the Marking Clerks employed at Charles Street Station, St. Paul, over and above the rate paid Marking Clerks at Hennepin Avenue Station, Minneapolis, as the Carrier's records will show.

Effective March 26, 1945, the Carrier completely ignoring the provisions of the Clerks' Agreement, created a position at Charles Street Station designated as Assistant Marking Clerk to which it applied a rate of \$7.03 per day, the rate then paid Checkers at Charles Street Station. The position so design-

OPINION OF BOARD: Prior to March 26, 1945, Checkers employed at Charles Street Station, St. Paul, Minnesota, were paid \$7.03 per day and the Marking Clerk at this station was paid \$7.79 per day. During the same period at Hennepin Avenue Station, Minneapolis, Minnesota, Checkers were paid \$7.03 per day and the Marking Clerk \$7.54. These two stations are in the same seniority district although several miles apart.

On March 26, 1945, Carrier created the position of Assistant Marking Clerk at the Charles Street Station and rated it at \$7.03. This rate was continued until December, 1945, when it was rated at \$7.79 per day. This rate was paid until January 17, 1946, when by added wage increases it became \$9.07 per day. On this date the rate was reduced 25¢ per day to \$8.82 to which was added a further rate increase of 2½¢ per hour. This brought the daily rate to \$9.02.

The record shows that in July 1929, the Main Street Platform was discontinued and the Chief Clerk working at that point was transferred to the Charles Street Station without loss of pay, \$5.87 (now \$9.27) per day, although the title of the position was changed to Marking Clerk. There was already existing at the Charles Street Station a position of Marking Clerk rated \$5.11 (now \$8.51) per day. In 1932, this latter position of Marking Clerk was abolished. The Marking Clerk from the discontinued Main Street Platform rated \$5.62 (now \$9.02) per day, was transferred to the Hennepin Avenue Platform with the same rate of pay. The Marking Clerk already established there, rate \$5.11 (now \$8.51) per day was also abolished in 1932. The rates of \$5.11 (now \$8.51) per day paid Marking Clerks from 1929 to 1932 was the same rate that Check Clerks received at these two platforms. The Organization contends that the differential of 76¢ per day between Marking Clerks and Check Clerks existing after 1932 at Charles Street Station should now be maintained and a similar differential of 51¢ at Hennepin Avenue Platform should also be maintained. A differential of 25¢ between the two platforms in favor of the Charles Street Station is also claimed.

On March 26, 1945, a position of Assistant Marking Clerk was established at Charles Street Platform and rated \$7.03 the same as Check Clerk. Claimant was assigned the position. On December 3, 1945, the rate was corrected to \$7.79 per day thereby reestablishing the 76¢ differential over Check Clerks. On January 17, 1946, the position was bulletined at \$8.82 per day, the same being the former rate plus wage increases, less the 25¢ differential. The position was abolished on August 11, 1947, without further change in rate.

The Organization contends the rate of the position when created should have been \$7.79 and not the Check Clerk rate of \$7.03 by virtue of Rule 44, current Agreement, which provides:

"The rates of pay for new positions shall be in conformity with the rates for positions of similar kind or class where created."

The Carrier contends that instead of creating a new position that it in fact reestablished the Marking Clerk position abolished in 1932. This contention is untenable. The position was a new one applicable to Rule 44. The Carrier cannot properly claim that this was the reestablishment of a position abolished 13 years before. The contract does not contemplate the invasion of previous generations or decades in the solution of problems such as we have here unless the Agreement specifically so provides. Awards 2215, 2239, 2683, 2808, 3928.

The position was a new one. Its duties were those of Marking Clerk and it should be so titled. Award 3447. It should have been rated the same as the Marking Clerk at the Charles Street Platform, the work being of the same kind or class and within the same seniority district. Awards 2678, 2683, 2732, 2808, 3485, 3555. An affirmative award is required.

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 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 Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

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